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AN
ANALYSIS
OF THE
PRACTICE
OF
The Court of Chancery.

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SOLICITOR.

L O N D O N :

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1794.

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A N A L Y S I S

OF THE

P R A C T I C E

O F

The Court of Chancery.

THE High Court of Chancery has its name of Chancery, *Cancellaria*, from the Judge who presides here, the Lord Chancellor, or *Cancellarius*.

In this court, as in the Exchequer, there are two distinct tribunals: the one *ordinary*, being a court of *common law*; the other *extraordinary*, being a Court of Equity: which latter is become the court of the greatest judicial consequence.

Its jurisdiction is of vast extent, and has been generally divided into three parts, *viz.* Fraud, Trust, and Accident; but independent of these, specific performances of agreements, portions, powers, wills, devises, and legacies, executors and administrators, form very considerable branches of relief, which come within the cognizance of the equitable jurisdiction of this court.

When it appears on the face of a bill, that any of the courts of equity in the counties palatine, the courts of the two Universities, or the court of Admiralty, has the proper jurisdiction, the defendant may demur to the jurisdiction of this court.

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Where this court has an equal concurrent jurisdiction with another, if the suit be first commenced here, this court will grant an injunction, as to any suit in the other court touching the same matter.

This court will not take cognizance of a sum originally below the dignity of it; and if a bill is brought for a less sum than 10*l.* except in cases of charity, or for lands under the value of 40*s.* *per annum*, except for rent service, the defendant may either demur to, or move to dismiss it. *Mosel.* 47. 356. *Cary's Rep.* 147. *Pract. Reg.* 227.

A person may bring a new bill in this court, though his bill in the Exchequer may have been dismissed. 1 *Ch. Caf.* 155.

From this court, as from the other superior courts, an appeal lies to the House of Peers.

Of the original Bill.

THE first commencement of a suit in this court is by preferring a *bill* to the Lord Chancellor, in the stile of a petition.

This *bill* must call all necessary parties, however remotely concerned in interest, before the court; otherwise no decree can be made to bind them; and must be signed by counsel, as a certificate of its decency and propriety. For it must not contain matter either scandalous or impertinent: if it does, defendant may refuse to answer it, till such scandal or impertinence is expunged.

The *bill* being settled and signed by counsel, it must be ingrossed and given to your clerk in court to file in the office of the six clerks.

Of the Subpœna, and Service thereof.

THE first process against a defendant, (if not a peer) is a *subpœna* to appear to and answer the bill; which *subpœna*, notwithstanding the stat. of 4 & 5 *Ann. c.* 16. is usually taken out and served before the bill is filed, which should be filed by the return of the *subpœna*, otherwise defendant may prefer costs, and plaintiff will not be permitted to file his bill till the costs are paid; but he may move to retain his bill, upon payment of costs out of purse. In order to obtain a *subpœna*, leave a *præcipe* at the Subpœna-office in Chancery-lane, with which must be left a warrant to prosecute, agreeable to 25 *Geo. 3. c.* 80.

If defendant lives above ten miles from *London*, the return of the *subpœna* must be on a day certain within the term; but if defendant lives in *London*, or within ten miles of it, you may obtain a *subpœna* returnable *immediately*, upon petition or motion founded upon an affidavit, that defendant lives in *London*, or within ten miles of it. No affidavit necessary, if defendant is an officer of the court. *Mosely* 42.

The *subpœna* must be served on or before the return day; and service on the return day is good before 12 o'clock at night; and service in the night is good, or on a *Sunday*, if the *subpœna* is not returnable on that day. So a *subpœna* may be made returnable and served the same day it is sealed; but it must be served before the court rises.

The service, if but one defendant, is by delivering the *subpœna* either to defendant, which is personal service, or by leaving it at his dwelling house with one of his family; or if he hath no house, at his last usual residence. If there be three defendants, you have two labels, which must first be served on two of the defendants, shewing the body of the *subpœna* at the time of serving the labels, and afterwards serve the body under seal on the last defendant. If the label only be left with a servant of the family, *after appearance*, the Court will not set it aside, the irregularity being waved. 1 *Ves.* 386. It is good service to leave the *subpœna* hanging on the door, or by the window of the house where defendant ordinarily resides: but this is, where the *subpœna* comes to defendant's hands afterwards. *Cary Rep.* 57. Service on the husband is good service on him and his wife, and leaving the body with the wife is good service on the husband. *Cary* 76. iii.

Where one party has sued another at law, and such plaintiff cannot be found or heard of, or if beyond sea, the Court on motion or petition, grounded on an affidavit of the fact, will order service of *subpœna* on another of the parties, or on the clerk in court, solicitor, or attorney to be good service on the defendant, and the order and *subpœna* being served on defendant's clerk in court, solicitor or attorney, and he or they refusing to appear, upon an affidavit thereof, the clerk in court will make out an attachment, upon which an injunction may be moved for to stay proceedings at law.

If defendant is beyond the jurisdiction of the court, service of *subpœna* on his clerk in court cannot be deemed good service, though he has by that clerk in court filed a bill relative to the same subject. *Bro. Ch. Rep. Bond v. Duke of Newcastle.*

Service on an agent, formerly a partner, ordered to be good service on a defendant abroad. *Bunb.* 107.

The Court on motion, will order leaving a *subpœna* with the turnkey of a prison to be good service on a prisoner at large: if defendant is in close custody, such service is good without motion.

If bill filed against a corporation, the process must be served upon some one of the members.

Where infants are defendants, and the mother secretes them, so as they cannot be served, service of the *subpœna* upon the mother is sufficient, as she is the natural guardian of her children. 2 *Mk.* 70.

If defendant is taken and brought in upon process of contempt for not appearing to the *subpœna*, he must, *in person*, enter his appearance with the Register: if defendant be arrested in the country, where he cannot conveniently come to *London*, he may obtain an order, that he may enter his appearance by his clerk in court on such process.

Of Contempts.

IF defendant, on service of the *subpœna* does not appear within the time limited by the rules of the court, and plead, demur, or answer to the bill, he is then said to be in contempt; and the respective processes of contempt are, upon motion, in successive order awarded against him. The first of which is an (a) *attachment* directed to, and commanding the sheriff to attach defendant and bring him into court. If the sheriff returns *non est inventus*, then an *attachment with proclamation* issues. If this be returned *non est inventus*, a *commission of rebellion* is awarded. If upon this a *non est inventus* is returned, the Court then sends a *serjeant at arms* in quest of him; and if a *non est inventus* is returned, then a *sequestration* issues to seize all his personal estate, and the profits of his real, and to detain them subject to the order of the Court.

If defendant is taken upon any of the above processes, he will be committed to the *Fleet*, till he puts in his appearance or answer, or perform whatever else the process is issued to enforce, and also clears his *contempts* by paying the costs which plaintiff has incurred thereby.

(a) *Attachment ordered, where subpœna served abroad. Scott v. Hough, Bro. Ch. Rep. 1793.*

The process against a body corporate is by *distringas*, to distrain them by their goods and chattels, rents and profits, till they shall obey the summons or directions of the Court.

Of the Writ of Sequestration.

THE order for this writ must be left with plaintiff's clerk in court, together with the names of the persons whom plaintiff chuses to have inserted as commissioners, and he will make out the writ, which being sealed, the sequestrators proceed to seize and sequester the real and personal estates of the party against whom the writ issues: and plaintiff's counsel may move for tenants to attorn and pay their rent to the sequestrators.

Sequestration for non-payment of money, the first motion is *nisi*. *Bro. Ch. Rep. Crawley v. Clarke (a)*

Sequestrators ordered to sell goods, where the party is in contempt for non-payment of money. *Bro. Ch. Rep. v. 3d. p. 362.*

Goods sequestred on mesne process not to be sold, such sequestration being only to found the further process of taking the bill *pro confesso*. *Bro. Ch. Rep. v. 3d. part 1. p. 72.*

If any person claims title to the estate sequestered, either by mortgage or judgment, lease or otherwise, he shall not be obliged to file a bill to contest such title; but he may move the Court, as of course, to be examined *pro interesse suo*: whereupon plaintiff must exhibit interrogatories to examine him, and for a discovery of his title to the estate, and the Master must state the same to the Court, and upon his report the Court gives judgment.

Interrogatories exhibited of course to falsify an examination *pro interesse suo*. *Bro. Ch. Rep. v. 2d. p. 15.*

Of Appearance to the Subpœna.

DEFENDANT is not bound to appear till the return of the *subpœna*. If defendant lives within 20 miles of London, and is served on the return day, he hath 4 days after the return to appear; if served within 4 days before the day of the

(a) On motion for the sequestration you must produce writ of execution under seal, letter of attorney from the person (to whom the money was decreed to be paid) to demand the money, (if so demanded) affidavit of the execution thereof, and affidavit of demand having been made.

return, he hath 4 days *exclusive* of the day of service: if served 4 days or more before the return, he must appear on the return day. If defendant lives above 20 miles from *London*, and is served on the return day, or within 8 days before the return, he hath in either case 8 days from the day of service to appear; but if served 8 days or more, he must appear on the return day. If *subpœna* is returnable *immediately*, defendant hath the same time, *exclusive* of the day of service, to appear in as before, *viz.* within 20 miles of *London* 4 days, above 20 miles 8 days.

If a person is suspected to have absconded to avoid being served with *subpœna*, the Court will on motion or petition, supported by affidavit of defendant absconding, make an order appointing a day for his appearance, which order is to be inserted in the *London Gazette*, and published in the parish church of defendant's last place of abode, and also stuck up at the *Royal Exchange*; if defendant does not appear, plaintiff's bill will be taken *pro confesso* against him, and his estate sequestered. *Vide 5 Geo. 2. c. 25.*

If defendant applies to have the order, made under the above statute, discharged, he must support his motion by an affidavit, denying the charge in plaintiff's bill, in order that it may appear that he did not abscond to avoid being served.

The statute has made no provision for the case of a defendant served with a *subpœna*, and neglecting to appear, and avoiding the process of *contempt*, in which case plaintiff must issue process to a *sequestration*; for defendant must have appeared, or been in custody before the bill can be taken *pro confesso* against him.

Order granted for defendant to appear under the above statute notwithstanding a *subpœna* had been served; the sequestrators having returned that defendant had no real or personal estate. *Br. Ch. Rep. p. 388.*

If defendant is a prisoner in the *King's Bench*, and refuses to answer, he must be removed by *habeas corpus* to the *Fleet*, in order to have the bill taken *pro confesso*, if he does not answer by a certain day.

The above statute extends to bills of *reviver*.

Of demurring, pleading, and answering.

IF defendant appears, and takes an office copy of the bill, he is to *demur*, *plead*, or *answer*.

A DEMURRER is an appeal to the judgment of the Court, whether defendant is obliged to answer the bill: as for want
of

of sufficient matter of equity; or where plaintiff appears to have no right; or where the bill seeks a discovery of a thing which may cause a forfeiture, or may convict a man of any criminal misbehaviour.

If on the *demurrer* defendant prevails, the bill will be dismissed: if *demurrer* over-ruled, defendant must answer.

Defendant should file his *demurrer* before the rule to answer be out, and before order for time to answer, but after an order for time to answer only, he cannot demur, unless he obtains an order for that purpose.

Defendant till affected by process of *contempt* may put in a *demurrer* at any time, although the time for answering is out. *Bro. Ch. Rep. East-India Company v. Henchman.*

If *demurrer* over-ruled, defendant pays 5*l.* costs to plaintiff, but if allowed, plaintiff pays 5*l.* costs to defendant.

N. B. The parties will be liable to such further costs as the Court shall think fit to award. *Vide Ord. Ch. 6th January 1794.*

The *demurrer* (which is put in without oath) being settled and signed by counsel, a transcript thereof must be ingrossed on parchment with a 2*s.* 6*d.* stamp, and taken to defendant's clerk in court to be filed, and a note in the following form left with the Register, paying at the same time 1*s.*—*A. v. B. enter demurrer 2d January 1794. Barker Clerk.*

Each side may apply for an order to set down the *demurrer* to be argued; and this is done by leaving a *petition* with the Lord Chancellor's secretary, to whom 10*s.* is to be paid, when *petition* is answered, take it to the register office and bespeak the order, and when the same is entered serve a copy of it upon the adverse clerk in court 2 days before the hearing.

If plaintiff apprehends the *demurrer* will hold good, he may drop proceedings, by moving to dismiss his bill with costs: but if he has equity, and intends to proceed, he may by *motion* or *petition* obtain an order to amend his bill on payment of 20*s.* costs; but this must be done before the *demurrer* is set down to be argued, otherwise plaintiff must pay defendant the costs of the order for setting down the *demurrer* and 20*s.* besides, before he can amend.

After a *demurrer* has been allowed, defendant may move to have the bill dismissed with costs.

A PLEA may be either to the *jurisdiction*; shewing that the Court has no cognizance of the cause; or to the *person*; shewing some disability in plaintiff, as outlawry, excommunication, and the like: or it is in *bar*; shewing some

matter wherefore plaintiff can demand no relief, as an act of Parliament, a fine, a release, or a former decree, and the truth of this *plea* defendant must prove, if put upon it by plaintiff. But as bills are often of a complicated nature, and contain various matters, defendant may plead to part, demur to part, and answer to the residue.

Pleas in disability of the *person*, or to the *jurisdiction*, and pleas of any matter of *record*, or of matters *recorded in this court*, need not be upon oath; but pleas in *bar* of matters *in pais* are to be upon oath; and all pleas must be signed by counsel.

Where plaintiff apprehends the *plea* to be good, though not true, he may reply to the *plea*, and take issue upon it, and proceed to examine witnesses as in the case of an answer.

Either side may set down the *plea* to be argued; which is done by *petition* in the same way as you proceed to set down a *demurrer* to be argued.

All *pleas* in general ought to be entered with the Register within 4 days after filing the *plea*; but if not entered within 4 days it is over-ruled of course; and plaintiff, on the Register's certificate of it's not being entered, may take out a *subpœna* for costs, as of over-ruling a *plea*; and another *subpœna* against defendant for a better answer; and the *plea* can not afterwards be set down, without an order.

It is stated in 3 *Bro. Ch. Rep.* p. 372. That *plea* must be set down within 8 days.

After *plea* no motion can be made for an injunction till the *plea* is argued; but the Court, at plaintiff's instance, will speed the arguing the *plea*, and if over-ruled, will give plaintiff leave to move at the same time for an injunction. 3 *P. Wms.* 396.

If defendant dies before *plea* argued, his executor may plead *de novo*, for the former cannot be argued. *Cas. in Eq. Temp. Talb.*

A plea of a former suit depending here for the same matter need not be set down with the register, being a matter recorded in this court: but if the plaintiff be not satisfied with the plea, it must be referred to a Master to certify the truth thereof. *Pract. Reg.* 281.

An ANSWER is the most usual defence that is made to a bill. It is filed upon oath, or the honor of a peer; but, where there are amicable defendants, their answer is usually taken without oath by consent of plaintiff upon *motion* or *petition*.

If de-

If defendant lives within 10 miles of *London* (which is called a *town* cause) he has 8 days from appearance to answer; if above 20 miles (which is termed a *country* cause) he is intitled to a *commission*, which may be obtained upon *motion* or *petition*, to take his answer in the country, returnable in the following term, but defendant may by *motion* or *petition* obtain three orders for time to answer, *viz.* in a town cause a month, three weeks, and a fortnight: in a country cause six weeks, a month, and three weeks. The orders being passed and entered, serve copies on plaintiff's clerk in court, or leave the same at his seat with his clerk or agent, and at the same time shew the original orders.—*N. B.* If a defendant in a country cause does not appear till the return, he has till the first day of the ensuing term to answer without applying for any time, but he may be compelled to procure a *dedimus* in the mean time.

Putting in a *plea* is a sufficient compliance with orders for time to answer. *Bro. Ch. Rep. vol. 1. p. 56.*

On third application for time to answer defendant must consent to enter appearance with the Register by his clerk in court in 4 days, consenting that serjeant at arms shall go against him as on a commission of *rebellion* returned *non est inventus*, in case answer is not put in by time granted. *Ord. Ch. 23d January 1794.*

On second application for time to answer amended bill, or after exceptions allowed, defendant must consent to said terms. *id.*

But defendant is not precluded making application to the Court under special terms.

In an *injunction* cause, defendant must answer in eight days, although he lives above 20 miles from *London*; and if no *dedimus* procured, plaintiff is intitled to an attachment to ground injunction.

The answer must be settled and signed by counsel, and when ingrossed, defendant must be sworn to it, and notice thereof given to your clerk in court.

If defendant lives within 20 miles of *London*, he must be sworn to the answer at the *Public-Office* in *Symond's-Inn*, or before one of the masters of the court: if farther off, there may be a *commission* to take his answer in the country, for which you leave commissioners' names with your clerk in court, who will call on plaintiff's clerk in court for commissioners' names, to see the answer taken, which are all inserted in the commission, which is made out by the clerk in court, without any order.

If

If plaintiff will not name commissioners, apply by motion or petition for plaintiff to name commissioners within a certain time, or that defendant may take his commission *ex parte*.

It is the general practice, when defendant means to plead, to apply for a *special* commission, viz. to *plead, answer, or demur*, not *demurring alone*; for no *special* commission can be made out without an order, which is obtained of course, by motion or petition.

When the answer is taken, it will be annexed to the commission, and either one of the commissioners carries it up to *London*, or it is sent by a messenger. If the same is brought by a person not a commissioner, attend him to the public office, where the usual oath will be administered to him; afterwards give notice to your clerk in court of the answer being left. No oath is required from a commissioner. See *appendix* for form of notice of taking an answer, and how to execute the commission.

After a contempt duly prosecuted to a *proclamation returned*, no *dedimus* is to issue without motion, and good cause to satisfy the court touching the delay.

No *second* commission is to be had without *special* order, or good cause shewn, or *by consent*.

If the party who has the carrying of the commission, neglect to execute it, the court will grant a new one to the adverse party, and give him the carrying of it.

If by the fault of him who has the carrying of the *first* commission, the other is put to unnecessary trouble, the court will order a Master to tax him his costs, and upon cause shewn, order the party in fault to give security to pay the same before he obtains a *second* commission.

If the party who has the carrying of the commission gives notice of executing it, but does neither countermand notice in due time, nor execute it at the time, the court on motion, and affidavit of facts, will order costs to be taxed for the adverse party's attendance.

Where *corporations* are sued in their *political* capacity, they answer under the seal of the corporation; but if all those of which the corporation consists, be charged as *private* persons, they must answer upon oath.

In case of a *foreigner* not sufficiently versed in the *English* language, an order must be obtained, upon motion or petition, for an *interpreter*; and an answer being ingrossed in the language of the defendant, a *translation* thereof upon parchment must be made by the interpreter, and annexed: the
foreigner

foreigner must be sworn to his answer; the interpreter is previously sworn to interpret truly, and conveys to the foreigner the language of the oath; at the same time, he swears to the translation as true and just, to the best of his ability.

Of Scandal and Impertinence.

IN the case of *scandal* or *impertinence* in a *bill*, the defendant must move the court to have the bill referred to a Master, and if he reports it *scandalous* or *impertinent*, the court upon motion will order that such scandal or impertinence be *expunged* by the Master; and that the plaintiff shall pay the defendant his costs occasioned thereby.

A defendant to a bill, though not served with process, may appear *gratis*, and refer it for *impertinence*. *Bro. Ch. Rep. v. 2. p. 279.*

Similar proceedings are to be observed in the case of scandal or impertinence in an *answer*.

If the Master reports the bill or answer not scandalous or impertinent, then the party procuring the reference must pay the costs of such reference.

Motion to discharge an order to refer an answer for impertinence, obtained after notice of motion to dismiss, refused, because there is no established rule of the court within what time an answer may be referred for impertinence. *Bro. Ch. Rep. v. 1. p. 400.*

Of amending Bill, Plea and Answer.

NO exceptions for *formal minutiae* in the pleadings will be allowed in this court; for the parties are at liberty, on the discovery of any errors in *form*, to *amend* them.

A bill may be amended before or after appearance and answer. Plaintiff by motion or petition may obtain an order either to dismiss or amend his bill before answer filed; if to dismiss, it will be on payment of costs, if defendant has appeared and taken a copy of the bill; but if to amend, it will be without costs, plaintiff amending the defendant's office copy. If bill is amended after answer, and the amendment require an answer, plaintiff must pay defendant 20*s.* costs; but if no answer required to the amendment, the bill may be amended without costs, plaintiff amending defendant's office copy.

If a defendant is added *after* publication, the cause as to such *new* defendant must be heard upon *bill and answer*.

When plaintiff hath obtained an order to amend after answer, and neglects so to do, defendant may after three terms move to discharge the order, and at the same time move to dismiss the bill, in the usual manner.

If plaintiff neglects to act under the order to amend, defendant may move that plaintiff may amend in a limited time, or the order be discharged.

Although plaintiff amends bill several times, yet he shall not pay taxed costs, but only 40 s. unless defendant can state a case of particular oppression. *Bro. Ch. Rep. vol. 2. p. 291.*

An injunction is not dissolved by bill being amended. *Vide Hinde's Pract. in Chan. 23.*

A plea may be amended where there is a slip, if the material ground of defence appears sufficient, but not otherwise. *Bro. Ch. Rep. v. 2. p. 143.*

Defendant may, *without* notice, move to amend his answer in a small matter; but if it be in a *material* point, he must give notice, and the court sometimes grants an order, upon an affidavit that the defendant was surprized therein, and payment of costs.

An answer cannot be amended after an indictment for perjury preferred or threatened, in order to avoid the indictment. *Brown's Rep. in Cha. 419.*

If the amendments are more than two Chancery folios in one place, there must be a new engrossment.

Of Cross Bill.

A Defendant cannot pray any thing in his answer, but to be dismissed the court: if he has any relief to pray against plaintiff, he must do it by an original bill of his own, which is called a *cross* bill.

The plaintiff in the cross bill cannot compel an answer from the plaintiff in the first bill, until eight days after his own answer is filed.

The cross bill must be filed before publication passes in the first cause, except plaintiff in the *cross* cause will proceed to hearing upon the depositions already published. *Nelf. Chan. Rep. 103.*

If after a cross bill filed, a plaintiff in an original bill will amend it in material parts, and thinks fit to compel an answer to the amendment at the same time with the original bill, he waives his priority of answer to the original.

In

In general, a defendant to an original bill, who afterwards files a cross bill, is not to be allowed his costs in the first cause, till the merits of the cross bill are determined.

If there be a bill in one court of equity, there may be a cross bill in another, as if the mortgagor exhibit a bill in the Exchequer to redeem, the defendant may bring a bill in Chancery to foreclose. 1 Vern. 221.

Of a supplemental Bill.

WHERE new matter happens *pending* a suit, and after replication, or the cause is at issue, and which new matter is necessary for plaintiff to set forth, this cannot be done by way of amendment; but such new matter must be set forth by a *supplemental* bill.

Of a Bill of Revivor.

BILLS of *revivor* are brought to *revive* suits and all proceedings thereon *abated* by the *death* of parties.

A bill of revivor may be brought either before or after hearing; if to *revive only*, it is revived without answer, after appearance upon motion, suggesting that the time for answering is out. But if to *revive*, and *answer*, an *attachment*, and all the *subsequent* process of *contempt*, may issue as on any other bill, if the defendant answer not in time.

In the case of a bill by *creditors*, on behalf of themselves and other creditors, any creditor is intitled to *revive*. 1 Eq. Ca. Abr. 3.

If it is a bill of *revivor* and *supplement*, the answer must be filed thereto; and then an order may be obtained that the cause may stand revived.

The *marriage* of a *feme sole plaintiff* will abate the suit; but by the *marriage* of a *feme sole defendant*, the suit does not become abated, although after marriage her husband must be named in all the subsequent proceedings.

If an executor or administrator do not *revive* within six years, the Statute of Limitations is a good plea in bar to a bill brought by them afterwards; but in case there has been a decree to account, the statute has been held to be no plea. 1 P. Wms. 744.

A defendant to a bill of revivor cannot plead a plea which has been pleaded by the original defendant, and over-ruled. Bro. Ch. Rep. v. 3. pt. 1. p. 70.

Of

Of Exceptions to an Answer.

IF plaintiff conceives an answer to be insufficient to the charges in the bill, he may take *exceptions* to it, stating such parts of the bill, as he conceives are not answered, and pray that defendant may put in a full answer to the bill.

Exceptions are drawn, or at least perused and signed by counsel; and care is to be taken in drawing them, for no new exception can be added. Copy them on unstamped paper, and deliver them to defendant's clerk in court, which is called filing exceptions.

If an answer is filed in term, plaintiff must except the same term, or in eight days after: but if filed in the vacation, plaintiff need not file exceptions till eight days after the beginning of the following term: but if plaintiff has omitted to file exceptions in time, he must either procure defendant's consent, or obtain an order by motion or petition for leave to file exceptions: but if two terms are elapsed since the answer was filed, the court will not grant an order but under very particular circumstances. If an order is obtained by misrepresentation, defendant may move to have it discharged with costs.

Defendant has eight days after filing exceptions, to submit to answer exceptions; and if in town, he has eight days afterwards to answer; but if in the country, he is intitled to a commission to take answer returnable the first return of the ensuing term.

Plaintiff may deliver exceptions immediately on coming in of the answer, to prevent defendant moving to dissolve an injunction, when an injunction has been obtained.

If defendant submits to answer, it is on payment of 20s. costs to plaintiff; and defendant may obtain two orders for time, *viz.* in a *town* cause, a month, and a fortnight; in a *country* cause, six and three weeks: but if defendant do not submit to answer in eight days, you must, by motion or petition, obtain an order to *refer* the exceptions to a Master; serve the order, and leave a copy of the exceptions at the Master's chambers, and take out warrants thereon, which warrants must be served on defendant's clerk in court: if the other party does not attend, the Master will proceed *ex parte*, on oath of the service of three warrants. If the answer is reported *insufficient*, the report must be filed at the Report-office four days after signing, (but it is sufficient if filed before any proceedings thereon) and plaintiff may have two
subpœnas,

Subpœnas, one returnable immediately for a better answer, which may be served on defendant's clerk in court; and if defendant is satisfied with the Master's report, he must within eight days after service of the *subpœna* put in a further answer, or obtain an order (a) for a month's time; the other *subpœna* is for costs, which are 40 s. if answer taken in town, and 50 s. if taken by commission.

When cause is shewn for a continuance of an injunction upon exceptions filed to the answer, the party must procure the Master's report in four days (or he will lose the benefit of his order), and serve his warrants with all possible dispatch; and a day's notice to attend is sufficient; as, if the warrants be taken out in the morning, to attend in the evening: but where the Master cannot finish his report in four days, the solicitors usually agree that the Master shall date his report as within the four days; or the Master may certify that the time is too short, and the court upon reading such certificate will allow such further time as the Master shall certify he wants. So in an *injunction* cause, the plaintiff should file exceptions, before the defendant can have an opportunity of moving to *dissolve* the injunction *Nisi*; for although the plaintiff, on the day for shewing cause, shew exceptions, yet he will be put upon terms of procuring the report in four days, or the injunction will be dissolved without further order.

If there be a sequestration *Nisi*, for want of an answer, against a member of Parliament, and he puts in an answer before the order is made *absolute*, and exceptions are taken to the answer, the court will enlarge the time for shewing cause, till it appear whether the answer is sufficient. 3 *Atk.* 740.

If defendant's solicitor intends to insist upon the sufficiency of the answer, he must bespeak a copy of the exceptions left at the Master's office, or his attendance will not be allowed.

Either party may take exceptions to the report, which must be signed by counsel, and ingrossed on treble 6 d. stamp paper, and filed with the register, with whom you deposit 5 l. to be paid to plaintiff if the exceptions are over-ruled. When the exceptions are filed, either party may obtain an order, by motion or petition, to set them down to be argued.

(a) *Vide* Ord. Ch. 23d January 1794, respecting application for time to answer, &c. before stated.

When defendant *submits* to put in a further answer, or the answer is reported *insufficient*, you may move or petition to *amend bill without costs*; and that defendant may answer exceptions and amendments at the same time. Defendant is intitled to (a) three orders for time to answer amendments and exceptions.

No exceptions can be taken to an answer after replication put in; for by the replication it is admitted sufficient; yet in some cases the Court has ordered the replication to be *withdrawn*, and suffered exceptions to be filed upon payment of 20 s. costs.

If defendant submits to answer, or if the answer is reported insufficient, and defendant puts in a second insufficient answer, plaintiff cannot take exceptions to the second answer, but he must, by *motion* or *petition*, obtain an order to have the second answer referred to a Master to see if it be sufficient; and if reported insufficient, defendant must put in a third answer, unless he *excepts* to the Master's report. Defendant pays 3 l. costs if second answer reported insufficient, 4 l. for a third, and 5 l. for a fourth, and be examined upon interrogatories to the points reported insufficient, and stand committed, until answer, and costs paid. *Ord. Ch. 102.*

No new commission shall be awarded for taking a second answer, till the costs of the first insufficient answer be paid; nor then but by order on affidavit of the party's inability to travel, or other good matter, to satisfy the Court touching the delay, or by assent of the plaintiff or his clerk in court, for expediting the cause.

Where an exception is taken to an answer, a defendant cannot protect himself by saying, that he is a mere witness, but he should have availed himself of that by *plea* or *demurrer*; having submitted to answer, he must answer fully.

When a defendant pleads or demurs to any part of the *discovery* sought by a bill and answers likewise, if the plaintiff takes exceptions to the answer before the plea or demurrer has been argued, he admits the plea or demurrer to be good: but if the plea or demurrer is only to the *relief* prayed by the bill, the plaintiff may take exceptions to the answer before the plea is argued.

Exceptions will not lie to an infant's answer. *Bro. Ch. Rep. 1793, Copeland v. Wheeler.*

(a) *Vide Ord. Ch. 23d January 1794, respecting application for time to answer, &c. before stated.*

Of bearing upon Bill and Answer.

IF plaintiff finds sufficient matter *confessed* in defendant's answer to ground a decree upon, he may proceed to the hearing of the cause upon bill and answer only without filing a replication, or examining witnesses: but in that case he must take defendant's answer to be *true* in every point.

The cause is set down for hearing the same way as after publication has passed.

Of a Replication.

A Replication is plaintiff's reply to the answer, averring his bill to be true, certain, and sufficient, and defendant's answer to be directly the reverse; which he is ready to prove; upon which defendant rejoins, averring the like on his side; which is joining issue upon the facts in dispute.

The plaintiff has to the end of the third term after the answer is filed to file a replication. If no replication filed in three terms, defendant is intitled to move to *dismiss* the bill with costs, and if after replication is filed, plaintiff omits proceeding for three terms, defendant may move to dismiss the bill on an affidavit of service of notice of motion. Notice of motion not necessary where the bill is dismissed *before* replication.

The Court will not give leave to *withdraw* a replication, unless to the application something further is added, as that the plaintiff may thereby be enabled to amend his bill, or some reason that may induce the Court to grant the plaintiff this indulgence. *Potts v. Reynoll*, 3 *Atk.* 565.

If a defendant disclaims *generally*, and the plaintiff replies to the answer, and serves a *subpœna* to rejoin, the defendant is intitled to costs for the vexation, otherwise where the disclaimer is to *part*, and the answer to the residue. 3 *Atk.* 582.

Where witnesses have been examined, and no replication, the Court at the hearing, or even after a decree, will order a replication to be filed *nunc pro tunc*. *Mosely* 296.

Of the Subpœna to rejoin.

THE practice is to apply by motion or petition for a *subpœna to rejoin*, returnable *immediately* and that service on defendant's clerk in court may be deemed good service.

Though the cause requires no witnesses, yet it may be best for plaintiff to reply, to put defendant upon proof of his answer; but if he replies, and, without rejoinder or rules, brings the cause to a hearing; the answer will be taken wholly true, as if no replication had been filed; for the opportunity defendant had of proving his answer is taken from him, and if the *subpœna to rejoin* be not served, though it be sued out, the cause may be heard on bill and answer.

If plaintiff replies to defendant's answer, but never serves him with a *subpœna to rejoin*, he may rejoin *gratis*, in order to prove his answer, though plaintiff cannot force defendant to rejoin without a *subpœna*. *Moseley 123. pl. 77.*

If defendant rejoin *gratis*, or the parties go to commission *by consent*, there needs no *subpœna to rejoin*.

Of the Examination of Witnesses.

THE parties being at issue proceed to examine witnesses on interrogatories either before an examiner of this court, or by commissioners in the country.

Of the Examination of Witnesses in or near London.

WHEN a witness resides in, or within 20 miles of London he is to be examined by one of the examiners of this court in the *Examiner's office* in the *Rolls yard*, for which purpose interrogatories must be drawn and settled by counsel, afterwards they must be ingrossed on 12d. stamped parchment and left with your examiner.

The defendant being served with a *subpœna to rejoin*, may proceed to examine his witnesses, as well as the plaintiff, but if he does not, the plaintiff after having examined one or two witnesses himself, orders his clerk in court to give a rule for defendant to *produce* witnesses, and the plaintiff's clerk in court gives defendant's clerk in court notice thereof. The rule expires that day se'night from the day it is given,
and

and it must be entered 8 days before the expiration of the term, otherwise it must be entered in the ensuing term.

A clerk from the Examiner's office attends the witness to the *public office* to be sworn, afterwards presents him to the adverse clerk in court leaving a note of his *name* and *residence*; which gives the adverse party an opportunity to *cross-examine* him: but in order to prevent his being examined unknown to you, you may stick up a notice in the Examiner's office, that if *such a witness* comes to be examined in such a cause let him be *cross-examined*; or you may instruct your examiner accordingly.

If a witness is unwilling to attend, you may have a *sub-pœna ad testificandum* which you serve him with, and at the same time give him a shilling, and if he does not attend to be sworn, an affidavit thereof must be made and filed, and then move the court (upon the Examiner's *certificate* of the witness not being sworn) for an order, that the witness do in 4 days after service attend to be sworn and examined, or in default stand committed to the *Fleet*: the same method is to be pursued against a witness who refuses to be examined after he is sworn. The above order must be delivered to the *tipstaff* attending the court, who will procure a warrant from the *Chancellor's secretary* and will apprehend and carry the witness to the *Fleet*, where he must remain until he has been examined and paid the costs and tipstaff's and warden's fees.

After the witness has been examined and has paid the costs, the Court will *discharge* him upon motion or petition, and the Examiner's certificate of the witness having been examined.

If a witness be confined in *prison*, or by *sickness*, within 20 miles of *London*, his situation must be presented to the sitting Master at the Public office, or any other Master in his absence, requesting the Master's attendance on the witness. The Examiner usually accompanies the Master, with the interrogatories. Two days previous to the examination a notice thereof in writing must be served upon the adverse clerk in court specifying the title of the cause, and the name and place of confinement of the witness.

Plaintiff having examined his witnesses, another rule must be given by plaintiff's clerk in court, for defendant to shew cause why publication should not pass; the rule is out in 8 days, *viz.* that day se'night, and must be entered 8 days before the end of the term, or otherwise it must be entered the next term: and whether plaintiff examines any witnesses or not, it is usual to give rules to produce witnesses and pass

publication in order to preclude the adverse party from examining; for if defendant does not obtain an order to enlarge the time, publication will pass; but if defendant is straitened in time, he may, by motion or petition, obtain an order (which must be served upon plaintiff's clerk in court, and upon the examiner on or before the day publication passes) for enlarging the time for passing publication; but so as not to hinder plaintiff from setting down his cause: if by neglect, publication has passed, the Court will grant an order for defendant to examine his witnesses, upon defendant, his clerk in court, and solicitor making an affidavit that they have not seen, read, or heard read, the depositions of the other party.

The production of deeds, papers, &c. in the custody of a witness, may be obtained by a subpoena *duces tecum*: but this is now commonly done by order, on motion.

When the parties have obtained copies of the depositions, and find the interrogatories *too leading, impertinent, or scandalous*, you may get them referred to a Master by motion or petition; and if the Master reports them leading, and the report is not excepted to, the depositions must stand *suppressed* as of course by motion or petition: there must be a notice of such motion, and an office-copy of the report must be produced in court.

If a witness die before his examination is completed, his depositions cannot be made use of. 1 *P. Wms.* 414.

Re-examined where there has been a mistake. *Bro. Cha. Rep. Saundford v. St. Paul.*

Witness not to be re-examined but by order. *Id. v. 1. p. 388.*

If a re-examination is prevented by the act of God, the depositions taken may be made use of. 1 *P. Wms.* 414.

The examination of a witness being a *foreigner*, must be in *English*, and the interrogatories must, for that purpose, be translated into the language of the witness, and his answer translated by a sworn interpreter. *Bro. Cha. Rep. Lord Belmore v. Anderson.*

The evidence of *one* witness corroborated by circumstances (though to facts denied by defendant's answer) sufficient to found a decree. *Bro. Cha. Rep. v. 1. p. 52.*

Of the Commission to examine Witnesses.

WHERE the witnesses reside above 20 miles from London, the examination of witnesses is by commission.

The plaintiff's clerk in court makes out the commission (the order for that purpose passed, entered and served, being previously left with him), which when sealed, he sends to his client to be executed: but before he can make out the commission, the parties must strike commissioners' names, thus; —Plaintiff's solicitor leaves the names of four commissioners with plaintiff's clerk in court, who will call upon defendant's clerk in court for commissioners' names; each party strikes out two; plaintiff's clerk in court strikes out one of defendant's first; then defendant's clerk one of plaintiff's; so on, and the remaining four stand: this is called joining in commission, but the solicitors often agree to name two a-piece, and plaintiff's clerk in court makes out the commission accordingly. If defendant's solicitor fails to join and strike commissioners' names according to the order, get a commission directed to your own commissioners, in which case no notice of its execution need be given. The first taking out the commission is commonly the privilege of the plaintiff, but if the defendant has reason to believe that plaintiff will not proceed on his commission, he may apply for a duplicate; or if defendant has witnesses living in the country, distant from the plaintiff's, or *beyond sea* (a), defendant may by motion or petition obtain an order for a commission to examine his own witnesses only, in which case plaintiff may join in commission, and have one or two commissioners to attend, to cross-examine them, or at least one to see fair play. A commission cannot be executed in *term time*, but by order for that purpose; nor within 20 miles of *London*.

The depositions being taken, engrossed, and carefully examined with the paper copies, the commissioners make up the commission, that is, they sign each schedule or skin of the ex-

(a) Motion for a commission to examine witnesses *abroad*, must be on affidavit that the matter arose there, or reading sufficient to shew it out of the answer. *Bro. Ch. Rep. v. 2. p. 273. Vide Oldham v. Carleton, Bro. Ch. Rep. 1792*, where it is stated, that in order to obtain a commission to examine an evidence abroad, it is sufficient to state, in the affidavit, the name of the witness, that his evidence is material, and that he is abroad.

aminations, and also the interrogatories (if not signed before) and annex both to the commission, which are transmitted to *London* with the same care that the answer of a defendant is sent. The person who brings the commission to *London* (if not a commissioner) is allowed 5 s. but if the distance be considerable, a charge is made accordingly, and is allowed upon taxation of costs.—See Appendix for form of notice of executing the commission, and how to execute the same.

If either party does not examine witnesses within the time limited, he should be cautious not to let any of his commissioners attend the other party's commission; for if he does, after such an opportunity of hearing the evidence given on the other side, it will be difficult to obtain an order for a new commission.

When the commission is returned, the clerks in court for both parties may pass publication by consent; and then the depositions are copied and delivered to the solicitors.

Of Publication.

IF publication does not pass by consent, either party may give a rule for passing publication, which is out in eight days.

If rule for passing publication is expired, or publication passed, an affidavit by the party, his clerk in court and solicitor, of not having seen or read the depositions of the other party, is necessary to obtain an order for enlarging publication.

The court will, upon reasonable ground shewn by affidavit, enlarge publication, after a *precedent* order for that purpose, but there must be notice of motion (of the intended application) served upon the adverse party. Upon application to enlarge publication, it is necessary to state on what day publication passes, and whether by rule or order.

After depositions are published, either party may file exceptions or articles in the examiner's office, against the credit of any of the witnesses; but if both parties examine a witness, they thereby establish his credit.

In all cases of a cross bill filed, after the original cause is proceeded in, motion to enlarge publication should be special. 2 *Vez.* 36. *pl.* 111.

Where the defendant in a cross bill, who is plaintiff in the original bill, is in contempt for not putting in an answer to the cross bill, the plaintiff in the cross bill may have publication in the original cause enlarged to a fortnight after the answer to his bill comes in. 1 *Atk.* 21, 291.

Of Depositions.

WHERE a witness's depositions on one side, contradict his depositions on the other side, it is usual to order him to attend the court, that he may explain himself. *Pract. Reg.* 138.

A deposition of a witness may be amended, in case of a mistake by the examiner or the witness. *1 Chan. Cas.* 25.

If depositions taken by commission abroad, are omitted to be ingrossed upon parchment, or paper, with the usual stamp, after publication has passed, the depositions must be taken by the clerk in court to the *Stamp-Office* to be stamped, before an office-copy be delivered out: and where depositions are taken in the language of the country in which the commission was executed, an application must be made by motion or petition, that some *notary public*, or other person, (naming him) may be appointed to *translate* the depositions; and that such interpreter be sworn to the true translation thereof; and also that the parties applying may read an *office-copy* of such translation at the hearing of the cause. After the translation is made, and ingrossed upon parchment with a 2 s. 6 d. stamp, the translator must be taken to the *public office* to be sworn to the translation; which translation and the record of the depositions must be annexed together, and left at the *public office* until the clerk in court fetches them away.

If a legatee brings a bill against an executor, and proves assets, another legatee, though no party, may have the benefit of those depositions. *1 Vern.* 413.

Of Publication of Depositions taken de bene esse.

DEPOSITIONS of witnesses taken *de bene esse*, are not to be published, unless a witness dies, or is gone to a great distance; so that it is impossible to have a subsequent examination of him in chief. To effectuate the publication of such depositions, a certificate of the burial of the witness, or an extract from the parish register book of burials should be procured: or if not to be obtained, an affidavit of his death should be made. The certificate, or extract, should be verified by the affidavit of the person who made the search, and the affidavit should identify the witness being the same person who was examined, upon which, you may obtain, by motion, or petition, an order to publish the depositions.

The application should be made after publication has passed in the cause. Notice of the application (if by motion) should be served on the adverse clerk in court. The order to publish the depositions, after service, must be left with the clerk in court, in whose custody the depositions are lodged.

If a witness be beyond sea, upon an affidavit thereof, and that the party hath not heard from him for a certain length of time, nor doth know whether he is living or dead, or where he is; the court will make a similar order for publishing his depositions.

If any irregularity is discovered respecting such depositions, you must give immediate notice to the adverse clerk in court, and move to discharge the order for publication.

Examination of a Defendant as a Witness for a Plaintiff.

IF necessary to examine a defendant as a witness for the plaintiff, leave must be obtained, by motion or petition, and the order must be served, and left with the examiner.

A defendant may obtain a like order to examine a co-defendant as a witness.

If a defendant has a deed in his possession, which must be proved in the cause, and he refuses to leave the same with the examiner, the court, on application, will grant an order for him to leave the same with the examiner.

Examination of a Witness vivâ voce at the Hearing of a Cause,

IS admitted when deeds, writings, or other documents have been neglected to be proved, before publication has passed: or where plaintiff finding sufficient confessed in defendant's answer to ground a decree upon, proceeds to a hearing upon bill and answer. The defendant's answer in such case being taken as true, no examination of witnesses is necessary; the proof therefore of deeds, &c. must be by witnesses *vivâ voce* at the hearing of the cause, for which purpose an order must be obtained, by motion, or petition, praying leave to examine a witness *vivâ voce*, &c. to prove the execution of certain deeds, &c. describing them, saving all just exceptions, a copy of which order, two days previous to the hearing of the cause, must be served upon the adverse clerk in court.

An unwilling witness may be compelled to attend by process of *subpœna*, procured upon an order obtained by motion, or petition. The return of the *subpœna* should be the day on which the cause is set down to be heard.

Examination to the Credit of a Witness already examined.

THE leading step towards an inquiry of this nature is, the filing objections or articles, (engrossed upon parchment with a 2s. 6d. stamp) in the *examiner's office*, if the depositions impeached be taken in *London*; or in the *fix clerk's office*, if taken by commission. These articles being filed, and a certificate thereof procured from the examiner, or the fix clerk; the court, upon application, by motion, or petition, of course, will give leave to examine witnesses thereon, and a commission may be obtained, to examine witnesses in the country.

Upon motion, you may have an order to examine to the credit of a witness, before publication passes. *Bunb.* 46.

You cannot exhibit articles against the *competency* of a witness after publication; but if the objection to the competency arose from a matter that came to the knowledge of the party, after the examination, you must apply by motion for leave to examine to this matter, upon a foundation of ignorance at the time of the examination. *3 Atk.* 643.

You may exhibit articles to the *credit* of a witness after publication.

Deeds and Writings.

WHERE a plaintiff by his bill charges that certain deeds and writings are in the possession of the defendant, and prays to have them left with defendant's clerk in court for inspection, and defendant by his answer confesses to have them in his possession, you may move to have such deeds and writings left with defendant's clerk in court, for the inspection of plaintiff, his solicitor, or agent.

Where a deed in plaintiff's hands, mentioned in plaintiff's bill, was necessary to the defendant's making his defence a full answer, the court ordered plaintiff should give him a copy of it. *Pract. Reg.* 131.

Of setting down the Cause for Hearing.

PUBLICATION being passed, the cause may be set down for hearing, either before the Lord Chancellor, or the Master of the Rolls, the term after publication, and by special order, the same term publication passes; and if plaintiff omits setting down the cause the term after publication is past, it may be set down at defendant's request the next subsequent term; but in *injunction* causes defendant may apply for setting down the cause the term next after publication has passed. *Ord. Chan.* 212.

You cannot hasten a cause to hearing, nor get any cause entered with the register for hearing, without a certificate from the six clerks that the pleadings are filed.

Application for setting down cause for an *early* day, must be by *petition*, not by *motion*. *Bro. Cha. Rep.* v. 1. p. 56.

Your clerk in court will get the cause set down, or you may set it down yourself with the register, first procuring from your clerk in court the six clerks' certificate of the pleadings being filed.

Of the Subpœna to hear Judgment.

THE cause being set down, procure from the register a note of the day the cause is set down, which must be annexed to a *præcipe* for the subpœna to hear judgment, and left at the subpœna-office. The subpœna is made returnable three days before the day on which the cause is set down for hearing; and on the back of the subpœna is indorsed the day appointed for hearing: and the service of this process is similar to that of a subpœna to answer.

If defendants live in *town*, or within 20 miles, the *subpœna* should be served 10 days at least before the day mentioned in the *subpœna* to hear judgment, except in the vacation between *Easter* and *Trinity* Terms, then 8 days. If defendants reside above 20 miles from *London*, the service must be 14 days before the time to hear judgment, except in the above vacation, then only 10 days.

If a defendant is an infant, the *subpœna* must be served on the guardian.

If defendant's solicitor and clerk in court refuse to give, or cannot give information where defendant is to be found, or
refuse

refuse to receive the subpoena, you may obtain an order by motion or petition on an affidavit of facts, that service on defendant's clerk in court may be deemed good service on defendant.

If necessary to adjourn the cause, you should present a petition for that purpose, to which defendant's clerk in court should subscribe his consent, or his counsel should consent, if application be by motion. When the order is drawn up, the register will mark the cause adjourned in the cause book.

Although defendant is served with an order to adjourn the cause, yet he must be served with a subpoena to hear judgment. *Moseley* 226.

When all the defendants are served, make an affidavit of the service, and procure an office-copy, to read on the hearing of the cause, if any of the defendants should not appear.

Hearing of the Cause.

THE Register, on the evening previous to the hearing of the cause for the ensuing day, usually makes out a paper of causes which stand next for hearing; one copy of which is fixed up in the Six Clerks office.

The Register's book of causes, pleas, demurrers, exceptions, &c. is always at the *register office* open for the inspection of the solicitors to inform themselves how far the cause stands out of the paper, and when likely to come on to be heard.

The cause standing in the paper for hearing, the clerks in court, and solicitors on both sides are to attend the court with the pleadings, (which must be signed by the respective six clerks) in order that the same may be read as occasion requires.

N. B. The *last* cause in the paper, if it happens to be called on, is always privileged, that is, neither party pays costs of the day for not attending when called on, the same never being struck out of the paper for non-attendance.

Where there are cross-causes between the parties, they may be brought on together at the request of either party, if the answer in the last cause comes in before the hearing of the first cause; and then it is usual to move at the same time, that the depositions taken in the second cause may be read on hearing the first, and that the depositions taken in the first cause, may be read on hearing the second, or cross cause.

Of a Decree.

THE decree is either *interlocutory* or *final*. It very seldom happens that the first decree can be final; for if any matter of *fact* is strongly controverted, the Court usually directs the matter to be tried by a *jury*; especially such important facts as the validity of a will, or whether *A.* is the heir at law to *B.* or the existence of a *modus decimandi* or real and immemorial composition for tithes. But, as no jury can be summoned to attend this court, the fact is usually directed to be tried at the *bar* of the court of *King's Bench* or at the *Assizes*, upon a *feigned issue*.

So likewise, if a question of mere *law* arises in the course of a cause, as whether by the words of a will an estate for *life* or in *tail* is created, or whether a future interest devised by a testator shall operate as a *remainder* or an *executory devise*, it is the practice of this Court to refer it to the *opinion* of the *Judges* of the court of *King's Bench* or *Common Pleas*, who upon hearing it solemnly argued by counsel *certify* their *opinion* to the Chancellor, and upon such certificate the decree is usually founded.

Another thing also retards the completion of decrees, frequently long accounts are to be settled, incumbrances and debts to be enquired into, and a hundred little facts to be cleared up before a decree can do full and sufficient justice. These matters are always by the decree on the first hearing referred to a Master in Chancery to examine; and then he is to report the fact, as it appears to him, to the Court. This report may be excepted to, disproved, and over-ruled; or otherwise is confirmed, and made absolute by order of the Court.

When all issues are tried and settled, and all references to the Master ended, the cause is again brought to hearing upon the matters of equity reserved; and a final decree is made.

After the decree is made, procure from the Register a copy of the minutes of the decree, and if necessary to have the same altered, an application should be made before the decree is passed either by motion or petition, that the minutes may be rectified, stating therein the specific matter to be added or altered.

In order to enable the Register to draw up the decree, leave with him the senior counsel's brief, and when the decree

decree is drawn, plaintiff's solicitor should be careful to examine and compare it with the pleadings, and to have the material proofs entered by the Register and mentioned in the decree as read, and afterwards it must be returned to be passed. The defendants may bespeak office copies of the decree; and it is usual to give them notice of passing the decree, in order that they may examine their copies at the same time. The decree being passed, it must be left with the *entering* Register to be entered.

If any proceedings are had inadvertently, they are irregular and voidable, and will be set aside for irregularity: if the party in possession of the original decree neglects or refuses to enter it, the office copy, regularly passed and signed, may be entered in like manner as the original.

A decree though obtained by fraud, cannot be set aside by *petition*. *Bro. Ch. Rep. vol. 3. p. 74.*

A final decree cannot be made upon an *interlocutory order*, without consent. *Bro. Ch. Rep. vol. 3. p. 149.*

Of References.

UPON hearing causes, all matters of account, as well as other matters, are generally referred to a Master, with some directions how to proceed therein.

When the decree has been entered, a copy of the title and ordering part should be left with the Master, with a copy of the proceedings you go upon; as a charge, &c. upon which you take out warrants from the Master's office to attend thereon; if the adverse party does not attend the third warrant which is called a *peremptory* warrant, the Master will proceed *ex parte*, upon oath being made of the service of the three warrants; if necessary, the parties may attend the Master by counsel, clerk in court, and solicitor. You serve copies of the warrants on the adverse party's clerk in court, which must be served two days before the attendance; and at the bottom of each warrant and copy must be written for what they are taken out and upon what to be attended; and you continue to take out warrants till the Master has gone through the proceedings. The first warrant is seldom attended, because the opposite party may not be prepared with office copies of the proceedings left with the Master. If there is any delay in the Master's office you may apply for orders for the Master to proceed *de die in diem*. *Bro. Ch. Rep. vol. 3. part 2. p. 45.*

Claims of Creditors.

IF the object of the suit be for a distribution of a testator's estate and effects, the usual advertisement for creditors to come in and prove their debts before the Master may be bespoke of the Master's clerk when a copy of the ordering part of the decree is left at the Master's office, which advertisement must be inserted in the *London Gazette*, and in the newspapers if required by the Master. The second advertisement may be had about a month or six weeks after the insertion of the first in the *Gazette*.

Claims of creditors are generally left by their solicitors in consequence of the above advertisements.

Where a bill has been filed, for an account, and a creditor comes in before the Master, but afterwards brings an action, the Court will enjoin on motion. *Bro. Ch. Rep. v. 3. p. 163.*

If the creditor had not come in before the Master, a new bill must have been filed. *Id.*

If a bill is filed by creditors or trustees for payment of debts, the Court will, by injunction, restrain a creditor from proceeding at law against an executor, because the Court, having taken the fund into its own hands, will not permit the executor to be pursued at law. *Bro. Ch. Rep. id. p. 183.*

Where a decree is made upon a bill brought by a creditor on behalf of himself and all other creditors of the same person, and another creditor comes in before the Master to take the benefit of the decree, and proves his debt, he cannot file a bill, in case of delay by the creditor who filed the original bill; but he must apply to the Court for liberty to conduct the cause. *3 Atk. 557.*

Examination of Defendants before the Master.

IF necessary to examine executors, touching their receipts and payments, interrogatories must be prepared for that purpose, which need not be signed by counsel; but the same must be left with the Master to settle, and warrants must be taken out for that purpose.

The interrogatories being settled, the Master's clerk ingrosses them, and the Master's certificate of having allowed them should be filed at the Report office.

Warrants

Warrants may be taken out to hasten the defendant to prepare and bring in his examination.

The Master will indulge the defendant with a reasonable time for that purpose, or an order for a month's time may be procured, on application to the Court, by motion, or by petition at the Rolls: but if after three warrants, and after the time obtained is expired, you may move the Court (upon an office copy of the Master's certificate that the examination is not put in) "*that the defendant may put in his examination within 4 days or stand committed.*"

The order being served, if defendant doth not put in his examination within the time limited, you may move (on an office copy of the Master's certificate of defendant's default, and on an affidavit of service of the former order) for a serjeant at arms, who will take defendant into custody; where he must remain until he hath put in his examination and cleared his contempt.

Where parties go before the Master upon a reference, he must receive interrogatories from both, though one of them should not have gone into any proof in the former stage of the cause. *Bro. Cha. Rep. v. 3. p. 190.*

Examination.

THE *examination* being prepared, must be signed by counsel, engrossed on parchment with a 2s. 6d. stamp on each skin, and sworn before a Master. The Master's clerk makes a copy of the examination for plaintiff's solicitor.

This *examination* grounds all the proceedings by *charges* and *discharges*, in taking the accounts, and ascertaining the facts, for the discovery of which the interrogatories were framed.

If the examination should appear insufficient, you may apply to the court by motion, or to his Honor by petition, praying that the interrogatories and the examination may be referred to the Master.

On three insufficient examinations, you may apply to the court by motion that defendant may stand committed.

Where a party is taken up for not putting in an examination, he may move to be discharged on clearing his contempts.

Production of Books and Papers.

IN addition to the examination, any party may compel (by *warrant* before the Master) the production of all *books and papers*, where it is so directed by the decree.

The books and papers required must be left by defendant, with an affidavit of the same being all that are in his custody or power, or that he ever had; in default of which, you may apply to the court (on the Master's certificate) that defendant may within four days leave with the Master the books and papers required, or in default that he may stand committed.

Further time for the production may be obtained, if necessary.

When the books and papers are brought in, an office copy of the affidavit made on leaving them must be had, in order to see what is left, and that the affidavit is sufficient.

Charge and Discharge.

THE *charge* is taken from the *schedule* in defendant's examination. A copy of the charge must be left with the Master, and warrants taken out to proceed thereon.

On attending the warrants, the evidence in support of the charge is read from the examination.

When the charge hath been allowed, if defendant doth not bring in his *discharge* immediately, a warrant may be taken out to compel him.

When the *discharge* is brought in, take a copy of it, and attend defendant's warrants thereon; when defendant must produce before the Master vouchers for all payments above 40 s. if the adverse party will not admit such sums to have been paid. If the sums are 40 s. or under, the same will be allowed by the Master on the party's own oath.

N. B. The court will not order a balance, upon charge and discharge in the Master's office, to be paid in, before the Master has made his report. *Bro. Cha. Rep. v. 3. pt. 1. p. 45.*

State of Facts.

IF the Master is directed to inquire of what estates a testator died seised or possessed, a *state of facts* must be prepared and left with the Master: and if the same is disputed, proof in support thereof must be read from the pleadings in the cause, or from the proceedings before the Master, if proof can be collected from them; if not, interrogatories must be exhibited for the examination of parties in the cause, or of witnesses.

Examination of Witnesses before the Master.

THIS examination must be on interrogatories, which are not settled by the Master (as the interrogatories for the examination of a defendant) but they must be settled and signed by counsel. When prepared, they must be engrossed on parchment, with a 2s. 6d. stamp, and left with the Master's clerk, who will examine the witnesses, and afterwards deliver copies of the examination to the solicitors.

If any witnesses reside in the *country*, they may be examined by a *commission*, which may be had, on the Master's certificate, that such commission is necessary. The commission is made out by the clerk in court, without an order, where the parties join in commission. If the adverse party declines joining in commission, an order must be obtained by motion, which order must be served on defendant's clerk in court.

The commission being returned executed, the bearer thereof, if a commissioner named therein, may leave it with plaintiff's clerk in court, and no oath is required; but if brought by any other person, he must be sworn before a Master that he received it from a commissioner, and that it has not been opened, or out of his custody since. Give notice to your clerk in court of the commission being returned, that he may file it.

Particular for Sale of Estates.

WHERE estates are directed to be sold before a Master, a *particular* must be prepared by plaintiff's solicitor.

The particular being allowed by the Master, the *advertisements* for the sale must be had; which may be drawn by
D plaintiff's

plaintiff's solicitor, or the Master's clerk will draw them; and procure the Master's signature, to authorize an insertion in the *Gazette*.

Attend the sale at the Master's chambers at the time appointed.

Purchaser.

EACH purchaser procures a *report* of the *lot* he has purchased, which being filed, he applies to the court that the purchase may be confirmed: the order is an order *Nisi*. If no cause shewn after service of the order, apply to confirm the report *absolute*. The purchaser will then be entitled to a conveyance, on payment of the purchase-money, and may at any time apply to the court for leave to pay in the purchase-money, and to be let into possession of the estates.

After an order to the tenant in possession to deliver possession to a purchaser, service of a writ of execution of that order, attachment and injunction personally served, and affidavit of the facts, and of disobedience, a writ of assistance shall issue. *Bro. Cha. Rep.*

One purchaser may be substituted for another upon motion *with consent*. *Bro. Cha. Rep. v. 2. p. 391.*

It is no objection on the part of a purchaser of land, sold by a Master, that more land is sold than is necessary for the purpose of testator's will. *Id. p. 248.*

When money is decreed to be laid out, under a marriage settlement, in purchases, application must be made to the court upon each *separate* purchase. *Id. v. 1. p. 74.*

N. B. Estates charged with debts ordered to be sold, (if necessary) the heir at law being in the *East-Indies*, and the devisee insane. *Id. v. 2. p. 399.*

Conveyance.

AFTER the *drafts* of the conveyance are drawn, they must be settled by the Master; and when settled, his clerk will engross the deeds, procure the report of allowance of, and deliver them to the solicitor. The report must be filed, and an office-copy taken.

Opening the Biddings.

IF any person wishes to advance on the sum offered by the highest bidder, for the lot on which the order *Nisi* has been obtained to confirm the report of the sale, he must apply to the court, within the eight days allowed, to *open the biddings*. This is done by motion, stating the advance offered. Notice of the motion must be given to the reported purchaser, and to the parties in the cause. This application is considered as cause shewn against the order *Nisi*.

Bidding may be opened upon a proper offer, even a second time, if the Master's report has not been confirmed. *Bro. Cha. Rep. v. 3. p. 475.*

If the Master's report of the purchaser is confirmed, the bidding shall not be opened but on *special* circumstances. Mere increase of price, is not sufficient for this purpose, but that, together with the person principally interested being a prisoner for debt at the time of sale, is sufficient. If the bidding is opened, it will be, on a deposit of the whole sum, and the former purchaser will be intitled to all his costs, and the difference of interest of his money. *Bro. Cha. Rep. 1792. p. 172.*

N. B. If decree directs, that the personal estate shall be first applied to the payment of debts and legacies; and if there is a deficiency, that such part of the real estate as shall be necessary, shall be sold to make it up. An account of the personal estate should be taken previous to the sale of the real estate.

Maintenance for Infants.

IF the decree directs an inquiry respecting the *maintenance* of *infants*, and what will be a proper allowance, and it being necessary to obtain such allowance before the *general* report is made; an order must be obtained that the Master may make a *separate* report of the *personal* estate, and what *maintenance* will be proper to allow the *infants*. The order being obtained, and copies served on the adverse parties, leave the order with the Master, with a *state of facts*, and *proposal* for *maintenance*. The facts must be verified by affidavit, if not verified by any other proof in the cause. When the proposal and affidavit are left, take out warrants, and proceed thereon; and when the report is signed, file it, and present

a *petition*, praying that the report may be confirmed, and that the maintenance may be allowed. Leave a copy of the petition with the *Chancellor's secretary*, who will get the petition answered: serve copies on the clerks in court for the adverse parties, and be prepared at the hearing with an affidavit of service.

Maintenance allowed, upon *petition*, for an infant, though no cause in court. *Bro. Cha. Rep. v. 3. pt. 1. p. 88.*

Receiver.

WHEN a *Receiver* is directed to be appointed, a proposal of some person for the office, and of *two sureties*, must be carried in before the Master. The proposal being allowed, and an affidavit of the sureties sufficiency being left, the receiver and his sureties then enter into a *recognizance* for his duly accounting, for what he shall receive. His duty is to receive the rents, and to grant leases of the estates, with the approbation of the Master.

Any person inclined to take a *lease*, must lay a proposal before the Master; and if the same is allowed, his solicitor must prepare a draft of the lease, to be settled by the Master.

When a receiver is *discharged*, he must apply by petition to have his *recognizance* vacated; which petition when answered must be served upon the clerks in court, for all the parties in the cause.

Order granted for a receiver to *distrain*: the distress to be in the name of the person having the *legal estate*. *Bra. Cha. Rep. v. 2. p. 87.*

Receiver cannot proceed in *ejectment*. *Id. p. 88.*

Motion for a receiver granted before answer. *Id. p. 158.*

Exceptions to a report of receiver over-ruled, as the report ought to stand till the party approved is impeached as an *improper person*. *Id. p. 253.*

Report.

A *Report* is a Master's certificate to the court how the facts or matters, referred to him by the court to examine, do appear.

The draft of the *general report* being prepared, take an office copy of it, and either party may take out a 4 day warrant thereon,

thereon, under-writing, "at which time the Master will sign his report;" which he will do, if *objections* in writing to the report are not brought in.

Objections to a Report.

OBJECTIONS must be left before the *transcript* of the report is signed by the Master; if objections are left, the adverse party takes an office-copy thereof, and attends the warrant taken out on leaving the objections; when the Master either allows or disallows the objections; and settles his report accordingly.

Confirming a Report.

NO order can be obtained to confirm a report to ground a decree, till filed with the register: after it is filed, move to confirm it, and the adverse party will have 8 days after *personal* service of the order *nisi* to shew cause to the contrary; during which time he may file *exceptions* to the report. If no cause is shewn, make an affidavit of the service of the order *nisi*, and file it, and apply to the *entering* register for a *certificate of no cause being shewn*; then give instructions to counsel to move to confirm the report *absolutely*. If the parties in the cause are six in number, or more, you must instruct counsel to move on a suggestion that the parties are numerous, and live remote from each other, that service of the order *nisi* on their clerks in court, may be good service.

If plaintiff moves to confirm report *nisi*, and defendant shews for cause, that he has taken exceptions; plaintiff too may except to the report, notwithstanding his motion. *Moseley 305.*

The adverse party may give an authority to counsel to consent that the report be absolutely confirmed in the first instance.

If after a report is confirmed *nisi*, a party obtains leave for the Master to *review* it, (which is very rarely granted) he must pay such costs as the court shall think fit.

N. B. If a report be made *before* hearing, it needs no confirmation; but process may be taken out to enforce the performance of it, without further motion, unless some order is obtained to controul it in due time, that is, immediately after such report is filed.

Exceptions to a Report.

EXCEPTIONS cannot regularly be filed, unless objections to the report have been first brought in, and either allowed or disallowed by the Master. The exceptions must be signed by counsel, engrossed on a 3ble 6d. stamp parchment, and filed with the register, with whom a deposit of 5*l.* must be left to answer the costs, if over-ruled. Then present a petition to the Lord Chancellor, for an order to set down the exceptions for argument; which order must be served within the eight days mentioned in the order *nisi* for confirming the report. When you present the above petition, leave a copy of the report and exceptions for the Lord Chancellor.

Upon arguing the exceptions, no evidence will be admitted in support thereof, but what was laid before the Master, upon the objections. *Primrose and Bromley, Mich. vacat. 1739.*

If any of the exceptions should be allowed, the Master will be directed to *review* his report. After the order is drawn up, take out warrants for the Master to *review* his report. After the report is signed and filed, and the usual orders obtained for confirming it, proceed to get the cause set down on *further directions*.

Exceptions cannot regularly be taken to a report for costs only; the regular method is, to state the objectionable articles in a petition, and pray leave to except. *Bro. Cha. Rep. v. 3. pt. 2. p. 321.*

Where exceptant prevails in any of the exceptions, he is intitled to the deposit. *Bro. Cha. Rep. Parker v. Prout.*

Further Directions.

IN order to set down the cause for *further directions*, after the report is confirmed, a *petition* must be presented either to the *Lord Chancellor*, or to the *Master of the Rolls*. With the petition should be left a copy of the decree and report. When the petition is answered, get the order drawn up and entered, and serve it on the clerks in court for the adverse parties. Get the cause entered in the proper cause book, and make an affidavit of the service of the order, and procure

procure an office-copy to read on the hearing, in case the adverse party should not appear.

The brief on further directions should shortly state the ordering part of the decree, and the Master's report, and should conclude with the directions to be insisted on at the hearing, and with such observations as relate to the points discussed either at the time the decree was made, or before the Master. The former brief should be delivered to counsel.

Be prepared on the hearing with the *Accountant General's* certificate of the state of the money and funds in the cause.

Make a copy of the title and ordering part of the order made on further directions for the Master. If the costs are directed to be paid out of the funds in the cause, the payment may be immediately made. If they are to be paid by a sale of part of the stock or fund, the order and report must be left with the register, and his certificate to the Accountant-General must be procured and left at the *Accountant-General's* office, with the order and report, and the Accountant-General will sell the stock, and pay the costs.

Issue at Law.

DRAW *Issue*, and if necessary to have the same settled by a special pleader leave a copy of the decree with the draft of issue for his perusal; when the issue is drawn make a copy thereof for defendant's attorney and attend him to settle the same. Then give notice of trial and proceed to enter the issue and make up the record as in other causes. After trial, present a petition for leave to set the cause down to be heard on the equity reserved, leave with the petition a copy of the decree, and of the record and postea thereon, for the Lord Chancellor.

After issue made up, it is proper to move this Court for a special jury, if necessary; and the Court will grant the same. 2 *P. Wms.* 68.

Application for new trial must be to this Court.

If plaintiff gives notice of trial, and does not countermand it in time, upon motion this court will give costs, and not put defendant to move the Court of Law, where the issue is to be tried.

Where the material issue is found for the party who sets down the cause for further directions, he must have his costs at law. *Brown's Rep. in Chancery* 420.

Decree Nisi.

IS, when the defendant does not appear at the hearing of the cause, in which case the Court calls upon the plaintiff to prove the service of the *subpœna* to hear judgment and pronounces the decree, which being passed and entered, plaintiff sues out a *subpœna* against defendant to shew cause against the decree; the service of which is similar to the service of other *subpœna*'s. This *subpœna* being served, instruct counsel to move (on an affidavit of service, and the Register's certificate of no cause shewn) to make the decree *absolute*.

If defendant means to shew cause against a decree *Nisi*, being made *absolute*; as soon as he is served with the *subpœna* to shew cause, an application should be made by *petition* to the *Lord Chancellor*, or *Master of the Rolls*, before whom the cause was set down, stating defendant's default, and praying that, upon payment of the costs of the petitioner's default in not attending the hearing, the cause may be *restored* to the paper of causes, and set down to be heard next after the causes already appointed to be heard, which will be ordered of course.

At the time of serving the order, a bill of costs pursuant to the order should be demanded, and if upon taxation, the clerks in court on each side differ, the decree must be taken to the Master's office, to whom the cause is referred, and the bill of costs left there, and warrants to tax the same must be served.

The taxed costs being paid or tendered to the adverse clerk in court, and a receipt obtained from him, that the same are paid, or an affidavit filed of a tender or refusal thereof; the defendant applies to the Register, with the order and receipt or affidavit, and the Register sets down the cause.

Rehearing.

IF necessary to have the cause *reheard*, you must apply by *petition* for a *rehearing*, which petition must be signed by two counsel, signifying they conceive that there is good cause
for

for it; and an order is usually made. The petitioner must deposit 10 *l.* with the Register to answer costs.

If either party intends to have the cause reheard, he must enter a *caveat* with the *secretary of decrees and injunctions* to stay the *signing* and *inrolling* of the decree.

You may either petition to have the cause reheard, or you may appeal to the House of Lords for relief.

No appeal or rehearing for costs only. *Brown's Chan. Rep.* 140.

Signing and inrolling Decrees.

UNTIL the decretal order is drawn up, signed, and inrolled, it has the force only of an *interlocutory* order, and is not *final*, but may be altered upon a rehearing, or sometimes upon motion; but it cannot be crossed, altered, or explained, upon a bare petition only, though it may be thereby stayed a while, till it can be moved in court. *Pract. Reg.* 123. 1 *Chan. Ca.* 45.

There is always six months allowed to enrol a decree, after that time, an order to enrol it *nunc pro tunc* must be obtained by *petition*.

By enrolment decree is perfected; after enrolment it cannot be reversed, but by *appeal* to the *House of Lords* within 5 years, or by bill of *review*, within 20 years from the pronouncing of the decree.

A decree must be inrolled before it can be pleaded in bar to a second suit brought for the same matter. 3 *Atk.* 805.

If a party *dies*, or a *female* plaintiff marries, after a decree is *inrolled*, the decree and proceedings must be *revived* by a *subpœna scire facias*. But if a decree is *not* inrolled, a bill of *revivor* must be brought.

Appeal to the House of Lords.

APPEALS are to be signed by *two* counsel, and exhibited by way of *petition*, and lodged with the *clerk* of the *House of Lords*, with whom the appellant is to deposit 20 *l.* to recompence the other party his costs, in case he fails in his appeal.

The appeal being thus lodged, and read in the *House*, the *respondent* is ordered to have a copy of the appeal, and required to put in his answer thereto on a day fixed; and a day

is appointed for hearing the cause, in order as the appeals come on, and notice thereof is given to the *appellant's* solicitor, who may get a *summons* served on the other side to appear.

The appeal can only be argued by *two* counsel on each side: printed copies of the appellant's and respondent's cases are usually delivered to the *Lords*; which cases are always signed by two counsel; whose names are printed at the bottom of the cases.

Bill of Review.

THE object of a bill of *review* is to procure an examination and reversal of a decree upon error of law appearing in the body of the decree, and it may be exhibited by leave of the Court, upon oath being made of the discovery of new matter which could not possibly be had or used at the time of passing the decree.

When a bill of review is brought for error apparent upon the *record*, the constant method is, for the defendant to put in a *plea* and *demurrer*, *viz.* a plea of the decree and a demurrer against opening the inrolment; an answer is rarely required: but if it is for matter come to plaintiff's knowledge *after* pronouncing the decree, then, upon a *petition* for leave to bring a bill of review, the Court will judge if there is any foundation for such leave. 1 *Atk.* 534.

Plaintiff must deposit 50 *l.* to answer costs, and must annex to the bill an affidavit of the *discovery* of the *new* matter.

If the *new* matter came to the knowledge of the party's solicitor, attorney, or agent, *before* the cause was heard, it is considered as notice to the party himself. 3 *Atk.* 35.

When a decree is *inrolled*, it cannot be altered without a bill of review, unless there be an apparent error in casting up the sums upon the *face* of the decree, which being a mistake of the *officer* in drawing up the decree, may be rectified upon *motion*: so likewise if some part of the decree be *omitted* in the inrolment, such *omission*, for the like reason, may be corrected upon *motion*.

The bringing a bill of review shall not prevent the execution of the decree impeached.

Fine and non-claim is a good bar to a bill of review, if the party be not in prison, &c. 2 *Vern.* 190.

Bills of Discovery.

THESE bills are commonly used in *aid* of the jurisdiction of some other court; as to enable the plaintiff to prosecute or defend an action at law; a proceeding before the king in council; or any other *legal* proceeding of a nature merely *civil* before a jurisdiction which cannot compel a discovery upon oath.

When a discovery merely, or a delivery of *deeds*, &c. is the object of the bill, an affidavit is not requisite. But if bill be for relief, as well as discovery, an affidavit must be annexed that plaintiff has not the *deeds* in his custody, or defendant may demur. 3 *Atk.* 17. *Anon.*

When the plaintiff has obtained a full discovery by the defendant's answer, the bill will be dismissed with costs to be taxed.

Bills of Peace.

THE nature and end of a bill of peace is, that where several persons having the same right are disturbed, on application to the Court to prevent expence and multiplicity of suits, issues will be directed, and one or two determinations will establish the right of all parties concerned, on the foot of one common interest, and the bill is preferred by all the parties interested, or a determinate number in the names of themselves and the rest.

Bills quia timet.

WHEN a person is apprehensive of being subjected to a future inconvenience, probable or even possible to happen, or be occasioned by the neglect, inadvertence, or culpability of another; or where any personal property is bequeathed to one after the death of another person in existence, and which the former is desirous of having secured safely for his use against the effects of any accident which may happen to it, previous to the accruing of his possession; in either of these cases a bill of the above description may be exhibited in this court, which in the one instance will quiet the party's apprehensions of a future inconvenience,

venience, by removing the causes which may lead to it ; and in the other, will secure, for the use of the party, the property, by compelling the person in the present possession of it, to guarantee the same by a proper security, against any subsequent disposition, or wilful destruction.

Bill of Interpleader.

BILL of interpleader is where two or more claiming the same thing, by different or separate interests, pray judgment of the Court, to which of them it belongs.

The plaintiff in a bill of interpleader must annex to his bill, or upon the filing thereof, make an (a) affidavit that he does not exhibit his bill by fraud or collusion with all or any of the defendants, or of any other person or persons, but only to be indemnified, and to pay his debt safely to such person to whom this Court shall order or adjudge the same to belong ; and the want of this affidavit is a ground of demurrer.

The plaintiff by his bill must offer to bring the money due from him into Court ; or in case such offer is not made, the Court, upon application of any of the defendants, will order the plaintiff to pay such money into court.

If a cause has been heard upon a bill of interpleader, and a trial at law directed to settle the right between the defendants, there is an end of the suit as to the plaintiff ; so that if he afterwards die, the cause shall still proceed, and there need no revivor. 1 *Vern.* 351.

If money is paid into court the plaintiff in interpleader is intitled to his costs out of such money ; but if no money is paid in then he must take his costs against the party who was wrong in the interpleader. *Vide Bro. Ch. Rep. vol. 3. pt. 1. p. 149.*

Bill in perpetuam rei memoriam.

THE end of this bill is to *perpetuate* the testimony of witnesses ; on affidavit that witnesses are old, infirm, sick, or not likely to live long ; or that they are going to

(a) *If several partners are plaintiffs they should all join in the affidavit. Sed quare.*

sea, or beyond sea; after bill filed, the Court, if witnesses are in the country, will, on *motion* or *petition*, grant a *commission*, according to prayer of bill; or if within 10 miles of London will order examination of them in court *de bene esse*.

If the witness lives till he can be examined *in chief*, he must be examined over again, as other witnesses in chief are; but if he dies in the mean time, then upon producing and proving the register of his death, the party for whose benefit he was examined, may apply by *petition* or *motion* for an order to publish his depositions; and to the petition must be annexed the certificate of the witness's death. The order must be served upon the adverse party's clerk in court.

If the witness beyond sea is not returned, there must be an affidavit of it, and that the party hath not heard from him for such a time, and that he doth not know whether he be living or dead; and in this case the Court will make the like order, as in the case of the witness who died before he could be examined in chief.

If a corporation would make use of one of its own members as a witness, they must disfranchise him, which is done by an information in the nature of a *quo warranto* against the member, who confesses the information on which the plaintiff obtains judgment to disfranchise.

A witness was ordered to be examined *de bene esse*, where the thing examined into, lay only in the knowledge of the witness, and was a matter of great importance, though the witness was not proved to be old or infirm. *Bro. Ch. Rep.* 641.

Bill after Decree.

AN original bill may be brought to explain, or confirm a decree, or to carry an act of Parliament into execution, or to revive or enforce the performance of a decree.

Of the Execution of Decrees.

IF the decree is for payment of money, the writ of execution (which the party is intitled to after the decree is inrolled) must be *personally* served, by delivering the party the process under seal, or as is more usually done a copy of it, shewing at the same time the writ under seal.

If

If the party obey not the decree after service of this writ, the ordinary process of contempt may be issued against him upon affidavit of the service of the writ, and that defendant hath not performed the decree, being filed in the proper office.

If defendant stands out all process of contempt, a *sequestration* will be granted.

If the decree is for the possession of land, and the party has been served with the writ of *execution of the decree*, and also with an *attachment*, the court usually grants an injunction to deliver up possession; and if this be disobeyed, upon affidavit of service of the injunction, the court will grant a writ of *assistance*, directed to the sheriff of the county where the lands lie.

Where there is an *equitable* demand, and the party is taken in execution on a decree, this court will notwithstanding issue all its process against his lands and effects, and the body being detained, is not, in this court, a satisfaction; the reason is, because he is detained for the *contempt*.

Injunctions.

INJUNCTIONS are frequently applied for to restrain proceedings at law, waste, and sale of copies of books, &c.

A bill must be filed, praying an injunction, and such other relief as is required.

If defendant does not appear in due time after service of the subpoena, and the bill is to stay proceedings at law, plaintiff's clerk in court will make out an attachment on an affidavit of service of the subpoena; then move for the common injunction.

If defendant does not answer in time, the like application may be made on an attachment, on a *dedimus*, or on defendant's obtaining time to answer.

Proceedings in spiritual court not stayed by injunction on attachment, *dedimus*, or on defendant's praying time to answer. *P. Wms.* 301.

Serve copies of the injunction on the party, his attorney, solicitor, clerk, agent, or servant, at the same time shewing the original under seal.

If on service of the injunction, defendant hath not commenced his action, he cannot sue out process; if he hath,
but

but not serve the same; or in case he hath, but hath not delivered or filed any declaration, he cannot proceed. If there be a declaration, he may call for a plea, and for want thereof sign judgment. If the cause be at issue, he may go to trial; if that hath been had, and verdict obtained, he may proceed to judgment, and affirm, if error hath been brought: but if judgment hath been executed, and debt and costs levied thereon, the sheriff cannot pay the same to the defendant, execution being stayed till answer, and further order. *Note*, In the Exchequer, all proceedings are stayed, be the cause in what stage it may.

Affidavit of the merits, must accompany motion for an injunction, where plaintiff at law is abroad; but not necessary on application that service of the subpoena upon the attorney may be good service. *Bro. Cha. Rep. v. 3. pt. 1. p. 24.*

If necessary to extend the injunction to restrain trial at law, a special motion must be made, and reasons shewn by affidavit, or by defendant's answer, that such an injunction is necessary.

Injunction to stay execution and trial, not granted on one motion. *Bro. Cha. Rep. v. 3. pt. 1. p. 87.*

If an injunction is served after writ of inquiry is executed, you may petition for leave to call for the return of the said writ, and to enter up final judgment with stay of execution, according to the injunction.

To obtain an injunction *previous* to the answer, the plaintiff must make an affidavit, stating his case, and that he cannot safely proceed to trial until the defendant has put in his answer.

On application for injunction *after* answer, nothing can be read but out of the answer: but it is different where there is a case of gross *fraud* and *collusion*; in which case, affidavits must be read, after answer put in. *Bro. Cha. Rep. v. 3. Isaacs v. Humpage* and others.

When a bill is filed to restrain waste or any other injury very detrimental, so that it is necessary to lose no time, an injunction may be applied for immediately after the bill is filed, by special motion supported by affidavit of the grievance.

In the long vacation, when the court does not sit, and consequently no motion can be made, the Lord Chancellor, upon petition, certificate of bill filed, and affidavit of facts, will grant injunction to stay waste.—*N. B.* The affidavit must set out a particular title. *Bro. Cha. Rep. v. 1. p. 57.*

Injunction

Injunction to restrain defendant from negotiating a bill of exchange given for goods not delivered, issued on certificate of bill filed, and ordered that the subpoena be served at the same time with it. *Id. Patrick and another, v. Harrison and another.*

When defendant has put in his answer to the bill, he may move to dissolve the injunction, and serve the order on plaintiff's clerk in court, which is an order *nisi*; upon defendant's moving to make the order *absolute*, plaintiff must shew cause against dissolving the injunction, either upon *merits* confessed in defendant's answer, or upon filing *exceptions* to the answer; if upon the merits, the court will sometimes order defendant to bring money into court.

Want of appearance or answer; not having cleared contempt; not having denied all equity; answer being reported insufficient; *all* defendants not having answered; plaintiff having equity, or case being hard; all these are good causes for *not* dissolving injunctions.

After appearance, no special injunction without notice. *2 Ves. Rep. 112.*

For injunction on the merits, after answer, notice of motion must be served on defendant's clerk in court.

The court will sometimes, upon motion, *revive* an injunction, although the same be dissolved, especially where equity appears evidently for the plaintiff, or his case is hard.

Injunction will be granted on *amended* bill, on special motion without affidavit, after injunction *dissolved* on the original bill, if amendments material to raise an equity, and the allegations are new. *Bro. Cha. Rep. v. 3. Edwards v. Jenkins.*

If an injunction be *irregularly* obtained, it is a motion of course to refer same to a master.

Perpetual injunctions will be granted, against proving will in *spiritual* court, the same having been found on trial at law to be no will; to stay action at law of several persons, right having been determined; on bill taken *pro confesso*; after *two* verdicts on trials at *bar* in favor of plaintiff's right; against a bond of fifty years; on decree for performance of trusts; against all proceedings in *England*, on a *foreign mercantile* transaction having been finally settled by the laws of a *foreign* nation.

If the party or his attorney proceed at law after service of an injunction to stay proceedings, the modern and usual way, for breach thereof, is to give notice of motion to the adverse clerk

clerk in court, that the party may be committed to the *Fleet* prison for breach of the injunction; and an affidavit being made of the service of said injunction, instruct counsel to move accordingly; and if the adverse party is not prepared to defend such motion, the court usually gives him a day to shew cause against such motion.

Of Proceedings against a Peer, and Member of Parliament.

IF a *peer* or a *bishop* is a defendant, you must prefer a *petition* to the *Lord Chancellor* for his *letter missive* to request an appearance; which petition being left with the *Lord Chancellor's secretary*, he will get it answered, and return it with the *letter missive*; an *office copy* of the bill must be delivered to the peer, with the letter missive; if he fails to appear, serve him with a *subpœna*, and if he does not appear, an affidavit must be made of service of the letter missive, petition, copy of the bill, and subpœna, on which move the court, that a *sequestration* may issue against defendant's estates, unless defendant shall within eight days after *personal* service of the order, shew cause to the contrary. If the order cannot be personally served, move the court upon an affidavit of the circumstances, that leaving the order at defendant's *residence* may be good service. If defendant does not appear after service of the order *nisi*, on certificate of his default from the Six Clerk, and on an affidavit of service of the order, the court, on motion, will make the order *absolute*: the clerk in court, on being furnished with commissioners' names, will make out the *writ of sequestration*. The court will not discharge the sequestration till the party has appeared, and paid the costs of the process; and then he may move to discharge the sequestration upon notice to the adverse party, if it be executed.

If defendant fails to put in his *answer*, a sequestration may be obtained.

If a bill be against a *member of Parliament*, the same proceedings are had against him as against a peer, and the plaintiff proceeds by way of sequestration, this difference excepted, that instead of a letter missive being directed to him, a subpœna is sued out in the first instance, which is usually left at the defendant's residence, if it cannot be served personally. *Note*, The first process of contempt against a *menial* servant of a *peer*, is a sequestration *nisi*.

Informations.

WHEN the *Crown*, or those whose interests are the objects of its peculiar care, deem it expedient to apply to this court for the purpose of having their respective rights protected, or more clearly ascertained; such application is made by way of *information*, and not by bill; and is carried on by the King's Attorney or Solicitor General.

If the suit does not *immediately* concern the rights of the *Crown*, the suit is conducted at the instance, and under the direction of some person whose name is inserted in the information, and is termed the *Relator*, against whom the court may award costs, if the suit should appear to have been improperly instituted, or in any stage of it improperly conducted.

By the death of one relator, if more than one, the suit is not impeded; and it is the death or determination of defendant's *interest* which can only abate the proceedings upon an information; except that in cases where there is but *one* relator, and that relator should die before the completion of the suit, the court will not permit any further proceedings till an order has been obtained for liberty to insert the name of a *new* relator.

The information must be perused, and signed by counsel, and his Majesty's Attorney or Solicitor General must also sign it.

N. B. In causes where the *Crown* is interested, it is necessary to make the Attorney General a party, and none of the King's counsel can be retained to plead against the *Crown*, without first obtaining an order from his Majesty for that purpose; which is done by *petition*, which must be written on unstamped paper, and carried to the *Secretary's office*, where the order is to be procured.

Bill pro Confesso.

IF a defendant appears to a bill, and stands out in contempt to a sequestration, the cause is set down to be heard, and the record of the bill produced and taken *pro confesso*, for which purpose an order must be obtained.

If defendant is a prisoner in the *King's Bench*, or in any other prison, and refuses to answer, he must be removed by
habeas

habeas corpus into the *Fleet*, before the bill can be taken *pro confesso* against him. *Chan. Rep.* 50.

If defendant has not appeared, the bill cannot be taken *pro confesso*, but the court will order a sequestration against his real and personal estates, until he clears his contempt.

If defendant demur, and the demurrer be over-ruled, and he refuses to answer, the bill may be taken *pro confesso*.

After an order to take bill *pro confesso*, merely putting in an answer is not sufficient to set aside the order, but the defendant must apply upon some reasonable grounds. *Bro. Cha. Rep. v. 2. p. 279.*

If a defendant *absconds* to avoid being served with process, the bill will be taken *pro confesso*, pursuant to the act of 5 *Geo. 2. c. 25.* as before observed. *Vide Habeas Corpus.*

Certiorari Bill.

THIS bill is merely to remove the cause and proceedings into the Court of Chancery, from an *inferior* Court of Equity.

When the party has filed the bill, he must enter into a bond with the register, to prove the suggestions of the bill, in 14 days. Then sue out and serve a *subpæna*, afterwards procure the Six Clerk's certificate of the bill being filed, and also the Register's certificate of security being given: prepare a brief of the bill, and move for the writ of *certiorari*. When the order is passed and entered, apply to your clerk in court to get the writ made out. The writ being served and returned, move to file the writ, which will be ordered to be filed, together with the proceedings removed. This being done, prepare interrogatories to prove the suggestions in the bill, file them with the Examiner; and the witnesses being examined, an order must be procured by motion or petition to refer the examination to a Master, and for the Examiner to attend with the depositions; if it appears by the bill that the plaintiff lives out of the jurisdiction of the inferior court, without proving any allegation, an order may be obtained on motion or petition to retain the bill removed; after which defendant must put in an answer, as if the cause had been originally instituted in this court; but if necessary to proceed upon the interrogatories, the Master's report must be obtained, and if he certifies the suggestions of the bill to be proved, move the court to have the bill retained upon such report: if the suggestions cannot be proved in 14 days, an

order for further time may be procured by motion or petition, upon an affidavit of the fact being filed. If the suggestions are not proved, a *procedendo* may be applied for.

The *certiorari* bond is to be from the plaintiff and one surety, to the Master of the Rolls, and the senior Master in Chancery, in the penalty of 100 *l*.

Disclaimer

IS where defendant by his answer, denies that he hath, or claims any right or title to the thing demanded by plaintiff's bill; and renounces all claim thereto. Plaintiff must not reply: if he does, and serves defendant with *subpœna* to rejoin, defendant will be entitled to costs for the vexation. *Pract. Reg.* 141.

The defendant ought regularly to wait three terms after his disclaimer is put in, before he moves for costs.

Dismission and Retainer.

IF plaintiff does not proceed in three terms, after all the defendants have answered, you may move as of course to dismiss the bill for want of prosecution, with costs, upon producing the Six Clerk's certificate of the answers being filed.

On dismissing bill before replication, it is not necessary to serve a notice of motion, but it is usual only for the clerk in court to leave a note at the seat of the adverse clerk with himself, or agent there, that he will dismiss the bill for want of prosecution, and so get the Six Clerk's certificate on which the motion is grounded, and moved of course without any affidavit; but if after replication, plaintiff ceases all manner of prosecution for three terms *exclusive*, the bill may, upon the Six Clerk's certificate, and giving notice of motion, and an affidavit thereof filed, (unless defended by plaintiff's counsel) be dismissed.

Though a bill be dismissed for want of prosecution, plaintiff may move to retain his bill on payment of costs out of purse; but in this case he must *speed* the cause.

After an order to *speed* the cause, plaintiff has a whole term and vacation to proceed in, before the bill can be dismissed. *Bro. Cha. Rep. v. 3. pt. 2. p. 191.*

After joining in commission, defendant hath no method left to get rid of the cause, but by obtaining a commission; and

and after the depositions are returned, to get a rule *ex parte* entered to pass publication, and the cause set down and heard at his own request.

If a bill is filed in the *Exchequer* and dismissed, and afterwards the same bill is brought in this court; the defendant must *plead* to it; and then it will be referred to a Master, to see whether it is the same bill or not: but if a will is depending here, and a second brought for the same matter, defendant may move, that it may be referred to a Master to see whether they are the same, and to dismiss one.

Election.

WHERE a man brings his action at law, and his bill in equity, for the same matter, defendant must first answer the bill, and then put the plaintiff to his *election* in which court he will proceed; and this is a motion of course, he has eight days to shew cause against making his *election*: if he elects to proceed at law, his bill stands dismissed with costs. If he chuses equity, then an injunction issues to stay his proceedings at law. This *election* is filed in the *Report-Office*, and signed by plaintiff's clerk in court, and is the authority for making out the injunction.

Security for Costs.

IF plaintiff resides out of the jurisdiction of the court, he may be compelled, by motion or petition, to give security for costs. If it appears by the bill that plaintiff does not reside within the jurisdiction of the court, an order may be obtained of course; but if it does not so appear, then a motion must be made upon an affidavit of plaintiff's residence, whereupon the court will order the usual security for costs to be given, for which purpose plaintiff must give defendant's clerk in court a note of the name, and description of the person intending to become security, which will be sent to defendant's solicitor, and if he approves of the person proposed, the usual bond is given to the two senior Six Clerks, not towards the cause, which bond is prepared by plaintiff's solicitor.

An ambassador's servant, plaintiff in this court, must give security for costs. 2 *P. Wms.* 452.

Defendant should apply for security to answer costs before answer, or time prayed to answer: but if defendant does not

discover till after, that plaintiff resides out of the jurisdiction of the court, he may apply at any time.

Defendant having destroyed the subject of the suit, and absconding, shall find security for costs, or plaintiff shall be permitted to dismiss his own bill without costs. *Bro. Cha. Rep. v. 2. p. 186.*

Paupers.

IN order to obtain admission to sue or defend *in formâ pauperis*, the party after making an affidavit before a Master, that he is not worth 5 *l.* his just debts being first paid, and his wearing apparel, and the matters in question, only excepted, must prefer a petition to the Master of the Rolls, praying to be admitted *in formâ pauperis*.

When plaintiff petitions, he must at the bottom of his petition have a certificate signed by counsel, signifying that he has just cause of suit. But there is no occasion for any certificate to a defendant's petition.

The affidavit must be made by the party, not by a third person. *Bro. Cha. Rep. v. 2. p. 272.*

Pauper shall not dismiss without costs. *Id. v. 3. pt. 1. p. 87.*

Plaintiff suing *in formâ pauperis*, shall not amend, by leaving out defendants, without paying their costs. *Id. v. 2. p. 272.*

Outlawry.

IF a bill is filed in the name of a person *outlawed*, defendant may plead the *outlawry*; the record of the outlawry, or the *capias* thereupon, must be pleaded *sub pede sigilli*, and is usually annexed to the plea; the plea continues only in force till the outlawry is reversed, but hinders all proceedings in the mean time; and when the outlawry is reversed, plaintiff, upon paying 20 *s.* costs, (if the plea is not argued) serves defendant with a subpoena to answer the same bill.

Outlawry must be pleaded before answer: defendant is not obliged to set down this plea, as he must other pleas, in eight days; but plaintiff must set it down, if he is advised that there is any insufficiency in point of form in *pleading* it; for being *sub pede sigilli*, it appears to be a good plea, and therefore is not presumed necessary to be argued.

Excommunication.

THE defendant may plead *excommunication* in the plaintiff, which must be certified by the *ordinary*.

This, like the plea of outlawry, ceases to be a bar when the disability is removed; and therefore plaintiff, purchasing *letters of absolution*, may, as at law, sue out fresh process, and compel defendant to answer the bill. *Pract. Reg.* 278.

Ne exeat Regno.

THIS writ is obtained by motion or petition, (a bill being first filed) on an affidavit that defendant is going beyond sea, and of money due to plaintiff; and which, if defendant should leave the kingdom, plaintiff would be in danger of losing.

When a party is taken, he must give a bond to the Master of the Rolls, in such penalty as the writ requires for yielding obedience thereto, or satisfy the court by answer, affidavit, or otherwise, that he hath no design of leaving the kingdom, or that he is not indebted to plaintiff; then he may give notice, and move the court that the writ may be discharged.

The modern practice is, for defendant to give security to abide the decree, before the court will discharge the writ, which security is taken by recognizance before a Master.

This writ refused at the suit of an assignee of a bond, the original obligee being dead without representatives. *Bro. Cha. Rep.* v. 3. pt. 1. p. 25.

A surety is not to be discharged upon defendant putting in his answer. *Preced. Chanc.* 230. 1 *Wms.* 263.

Habeas Corpus.

THIS writ is commonly obtained on motion. It is generally used to bring up prisoners to shew cause why they do not appear to, or answer a bill, and in order to a party's appearing, or answering and clearing his contempts, so that he may be discharged, or such order be made touching the matter as the Court shall see cause; and also to expedite the proceedings in obtaining a decree *pro confesso*.

If defendant is brought up *habeas corpus cum causis* from a county prison, and turned over to the *Fleet* prison, or in confinement there at the time of issuing the first process of contempt; in order to obtain a decree *pro confesso*, it is necessary to bring defendant into court: for which purpose procure the certificate of the warden of the *Fleet*, of defendant being in his custody, and move for an order for an *habeas corpus* directed to the warden, to bring defendant to the bar of the court, to answer his contempts, and if he stands out in contempt, an *alias habeas corpus* by order as before must be issued; if he persist in his contempt, a *pluries habeas corpus* must be awarded by order as above, and defendant obstinately continuing in contempt, the Court will order an *alias pluries habeas corpus* to be awarded, and that the clerk in court do attend with the record of plaintiff's bill, that the same may be taken *pro confesso*. If defendant obstinately stand out in contempt, an appearance will be ordered to be entered for him, pursuant to the stat. 5 Geo. 2. c. 25. and the clerk in court attending with the record of the bill, the matter thereof will be decreed to be taken *pro confesso*; or if the contempt be for not answering, a similar order will be made for taking the bill *pro confesso*, and the defendant will be remanded until he performs the decree.

Supplicavit.

THIS writ is made out by the prothonotary of Chancery; it is granted upon complaint and oath of the party, where any suitor of the court is abused, and stands in danger of life from another suitor. The contemner is taken into custody, and he must give bail to the sheriff; and if he moves to discharge the writ, the Court hears both parties on affidavits. If the contemner is ordered to give security for his good behaviour, he must do it by recognizance before a Master.

Exemplification.

AN exemplification is the copy of a matter recorded or inrolled, as decrees, letters patent, depositions, &c. and is made out from the inrolment thereof, and sealed with the Great Seal; and such exemplifications are as effectual to be pleaded, or produced in evidence as the decrees, &c. themselves

themselves are; and bills, answers, depositions, &c. being matters of record, are exemplified as well as decrees: but note, that nothing but matter of record ought to be exemplified; and therefore all decrees, deeds, &c. must be inrolled before they are exemplified.

Proving Will of Lands.

IF a will is made, and an estate of inheritance is devised from the heir at law, the devisee commonly exhibits a bill against him, in order to perpetuate testimony of it, by proving the due execution thereof; this is done by examining witnesses *in perpetuam rei memoriam*; the will (if the witnesses are examined in *London*) must be left at the Examiner's office, for inspection by the witnesses, and for their being examined thereto; which being done, and publication passed, the cause is at an end.

The heir at law, if he examines no witnesses, may give notice of motion for plaintiff to pay him his costs: but if he examines witnesses he shall not have costs, but bear his own. See 2 *P. Wms.* 285.

Though the heir at law cross-examine plaintiff's witnesses, he shall have costs.

Note, The rule of proving a will of lands in Chancery is this, *viz.* if the subscribing witnesses are all living, they must all be examined; if all three are dead, the Court will give credit to the hand-writing, and therefore proof that they are all dead, and also proof of their hand-writing, is sufficient to establish the will. If any of the witnesses are beyond sea, and not amenable to the Court, yet he or they must be examined by commission, and it must be proved that you could not examine him or them; and proving them abroad, without also proving an attempt to examine them, will not do.

Foreclosure.

IF mortgagor is apprehensive that the estate is worth more than the money reported due for principal, interest and costs on the mortgage, and wants time to raise money to pay off the mortgage, the Court, upon application, and an affidavit of the value, will usually enlarge the time to redeem for six months, and refer it back to the Master to tax the subsequent

subsequent costs, and carry on the subsequent account: and upon further application will enlarge the time for three months; which application should regularly be made before the time appointed for payment is expired.

But if a mortgagor cannot make more of his estate, but will let it go, mortgagee must, after the expiration of the six months, apply to the Court (which is a motion of course) for an absolute order to redeem, which must be upon an affidavit of the mortgagee's attending at the time and place mentioned in the report.

None but the mortgagee, or the person appointed by the report, can receive the money reported due, unless they be appointed by letter of attorney, and then the person appointed, if the money is not paid, makes an affidavit thereof, and then you proceed as before.

Where the personalty is deficient, and the same person is heir and executor, the mortgagee may pray a sale in the first instance. *Bro. Cha. Rep. p. 155.*

Partition.

UPON a bill filed praying a *partition*, a commission issues to various persons nominated by the parties who proceed without a jury.

When the commission is returned, the cause must be set down for further directions, and the final decree will direct the necessary conveyance to be prepared and executed by the parties.

No costs allowed on bills of partition, because it is for the benefit of both parties.

Dower.

THIS Court will assist a widow, intitled to dower, with a discovery of the lands or title deeds, or remove impediments to her rendering her legal title available at law.

It is now settled, that a widow labours under so many disadvantages at law, from the embarrassments of trust terms, &c. that she is fully intitled to every assistance that a Court of Equity can give her, not only in paving the way for her to establish her right at law, but also by giving complete relief

lief when the right is ascertained. *Bro. Ch. Rep. vol. 2. Curtis v. Curtis. Fonblanque's Treatise of Equity 19.*

The Court will, in favor of a widow, enforce a discovery against a purchaser for valuable consideration without notice. *Bro. Ch. Rep. v. 3. p. 264.*

If a widow die before her right is established to dower, Equity will, in favor of her personal representatives, decree an account of the rents and profits of the lands. *Wakefield v. Childs, 1791. See Fonblanque's Treatise of Equity 20.*

Trustees.

TRUSTEES, executors, guardians, &c. shall not pay, but have costs, except they be guilty of some breach of trust, or some wilful misdemeanor. *Pract. Reg. 354.*

Trustees shall not be examined as witnesses one against another. *Id.*

Where a trustee is insolvent, this Court will compel him to give security before he shall enter upon the trust: so likewise a trustee has been removed from his trust, though much against his will.

Trustees must not compound debts or mortgages, and buy them in for less than is due thereon. *3 P. Wms. 251.*

Guardian.

A GUARDIAN may be appointed, and maintenance allowed, upon petition without suit, and the costs of the petition are to be allowed to the guardian in his accounts. *Bro. Ch. Rep. v. 3. p. 500.*

In order to get a guardian appointed, present a petition to the Master of the Rolls, and when the same is answered, leave it with the Register to draw up the order, and when the order is passed and entered, leave a copy of it with the Master, with a state of facts, stating the property of the infant, in what manner he became intitled thereto, the yearly value of the real estates, and the amount of the personalty, also the infant's age, and the names of his relations or next of kin. The state of facts must be supported by an affidavit.

The Master having made his report, a petition must be presented to confirm the same; the petition may be in the name

name of the infant only, or by the infant and the person named as his guardian.

The petition, with a copy thereof, and likewise a copy of the report must be left with his Honor's secretary, or with the Lord Chancellor's secretary, who will get the same answered, and set down in the paper of petitions for hearing.

The order, confirming the report and appointing the person proposed guardian, on his entering into the usual recognizance being made, leave a copy of it with the Master, whose clerk will prepare the recognizance.

When the infant arrives of age, the recognizance may be vacated by petition or motion.

Infant.

AN infant is incapable by *himself* of exhibiting a bill, as well on account of his supposed want of discretion, as his inability to bind himself, and to make himself liable to the costs of the suit, and therefore sues by his *prochein amy*, his next friend, who is so named in the bill, and is liable to the costs of the suit; but if an infant attains 21, and afterwards proceeds in the cause, he is liable to the whole costs. *Mitford's Treatise* p. 26.

When an infant exhibits a bill, there is no occasion for a guardian to be assigned to him by the Court; but where the infant is defendant, the guardian assigned by the Court is to be called by that name.

If an infant, defendant, reside within 20 miles of *London*, the guardian is appointed in court upon a *personal* attendance of the parties; the infant having entered an appearance, the guardian may be appointed any day in term or vacation; in court by the Lord Chancellor or by the Master of the Rolls. The Register who attended that day on which the appointment was made, will, upon application, draw up the order, which is to be entered and served upon the adverse clerk in court.

If the infant neglects to appear, or to have a guardian assigned him, it is a motion of course (he being in contempt to an attachment) to move for a messenger to bring him into court, and if no person offers to be guardian, the Court usually assign the senior fix clerk, not towards the cause to be guardian; by whom the infant may answer, and defend the suit.

The

The answer is frequently taken without oath, by consent, for which purpose an order must be obtained by motion or petition.

If the infant reside above 20 miles from *London*, the guardianship is appointed by *commission*.

If the infant and guardian both reside above 20 miles from *London*, and the answer is to be taken upon oath, an order must be obtained by motion or petition, for a commission to assign a guardian, and to take the answer of the infant by such guardian.

If the infant and guardian reside above 20 miles from *London*, and the answer is to be taken without oath; or if the guardian reside in *London*, and the infant in the *country*, in either of these cases a commission to assign a guardian only will be sufficient.

The order for a commission being passed, entered and served, the original order is to be left with defendant's clerk in court with commissioners' names to insert in the commission.

A commission to assign a guardian only, is always made out *ex parte*, and the order is not served.

A person reduced by age or infirmity to a second infancy, may defend by guardian; in this case a special application should be made by motion or petition on affidavit, stating the particular circumstances of the party, and praying a commission to appoint a guardian.

Feme Coverts.

IF a wife sues her husband in this court, for performance of a marriage settlement, or the like, she must exhibit her bill by her *prochein amy*, who is liable to costs of suit.

If a *prochein amy* is not able to answer costs, the Court will order another to be named who is able and sufficient. *Pract. Reg.* 296.

Upon the affidavit of a *feme covert* that the bill was brought without her consent, it shall be dismissed. *Eq. Ca. Abr.* 72. *Preced. in Chan.* 376.

A *feme covert* who has a separate maintenance may sue alone. *1 Chan. Ca.* 35.

If a *feme covert* has any particular portion, or sum of money by settlement decreed her, which became due either before or after the marriage, the Court will not order it to be paid to the husband, unless he makes a suitable settlement
upon

upon her, or she appears in person in court, and consents thereto.

Wife's legacy not to be paid to the husband without her consent taken by commission, she being abroad. *Bro. Cha. Rep. v. 3. p. 237.*

If a *feme covert* claim in opposition to any claim of her husband, or if she lives separate from him or disapproves the defence he wishes her to make, she may, by motion or petition obtain an order to defend the suit separate from her husband. *Preced. in Chan. 329. 2 Atk. 50. 2 P. Wms. 371.*

If a *feme covert* answer alone without leave of the Court, the answer will be suppressed upon motion.

*Conveyance by Infant Mortgagee or Trustee, pursuant to
7th Ann. c. 19.*

PREFER a petition to the Master of the Rolls, when the same is answered get the order drawn up, passed, and entered.

Make a copy of the order for the Master, and leave with him a state of facts, and an affidavit in support of it.

The mortgage deeds, and an affidavit of the death of the mortgagee, and the age of the infant, are the only evidence necessary in support of the state of facts.

A petition must be presented to confirm the Master's report, and for a conveyance by the infant.

The petition, being answered, will stand in his Honor's paper of petitions for hearing.

The same proceedings as to a conveyance by an infant trustee.

Infant trustee directed to convey, though the trust estate abroad. *Bro. Ch. Rep. vol. 2. p. 325.*

By 4 Geo. 2. c. 10, lunatics being trustees or mortgagees, are empowered by themselves, or by their committees, to convey the estates of which they are seised in trust or mortgage.

Lunacy.

IN order to procure a commission of lunacy, you must have the affidavit of two or more persons, setting forth the state and condition of the lunatic, and some instances of his actions, to shew their opinion and belief of his being a lunatic, and incapable of governing himself; then prepare a
petition

petition to the Lord Chancellor, which together with the affidavit must be lodged with the secretary of lunatics, who will get the same answered.

If the commission is to be executed in the country, you must give in commissioners' names to the secretary.

When the petition is answered, carry it to the clerk of the custodies, who will make out the commission.

The commission being obtained, a summons or precept, (directed to the sheriff of the county in which the commission is to be executed) must be prepared, which three of the commissioners will sign and seal; then lodge it at the Sheriff's office.

If the lunatic is in custody of any person who will not voluntarily produce him (for he must be examined by the jury *vivâ voce*) then make out a warrant for that purpose, which the commissioners sign and seal *gratis*.

N. B. You may apply to the Lord Chancellor for an order for the above purpose.

If witnesses will not voluntarily attend, make out a subpoena, which the commissioners will sign and seal *gratis*.

Note. The precept, warrant, and subpoena, need not be upon stamped paper or parchment.

Upon the day of executing the commission, have the witnesses and lunatic ready; and the jury being sworn, proceed to take the inquisition thus, *viz.*

First read over the commission, and then the commissioners will examine the witnesses, and the lunatic (if necessary;) but the lunatic may insist on being examined, the commissioners and jury only being present.

The chairman sums up the evidence and facts to the jury, and after the jury have given their verdict, fill up the blanks of the inquisition, according to the inquest, and then read it over to them for their consent, which is to be signed both by the commissioners and the jury.

Note. A commission of lunacy must not be *specialy* returned; he must be found *mad* or not *mad*. *S. C. Chan.* 47.

The inquisition is generally written sheetwise on unstamped paper, and is signed by the commissioners and all the jurors. Then prepare an ingrossment of the inquisition upon 3ble 6d. stamp parchment, and annex it to the commission, which return on the back, writing these words, "*The execution of this commission appears by the inquisition hereunto annexed,*" which the commissioners sign, and then fixing labels and seals to the bottom of the inquisition, three for the commissioners on the left hand side, and likewise seals for the jurors, the
commission-

commissioners will sign the return of the commission, and sign and seal the inquisition; but there is no occasion for the jury to sign the ingrossment.

When the inquisition is compleated, carry it to the *Petty Bag Office* to be filed.

Some near relation or friend must petition for the custody of the lunatic's person, and in the same petition the person who will be intitled to his real or personal estate at his death, prays the care and management of the lunatic's estate and effects.

The custody of the lunatic's person is seldom granted to those who are to take his estate immediately upon his death, but generally to the nearest relation, who hath no right to his estate.

The petition must be lodged with the Secretary of Lunatics; and if the Lord Chancellor answers it in the affirmative, the committee of the person may demand the lunatic in whose custody soever he be; and the committee of the estate having entered into a recognizance with sufficient sureties before a Master, the Clerk of the Custodies will procure the commitment of his estate under the Great Seal.

The person who is found a lunatic, or any person on his behalf may enter a *caveat* with the Secretary against the petition for the commitment of his person and estate, and may then petition, that the commission may be superseded upon his being inspected and examined in open court: the lunatic should procure affidavits of two or three eminent physicians, with regard to his *sanity* and *capacity* of being able to take care of himself, and manage his own estate.

Where there is a reference to a Master, in a case of lunacy, he shall make his report, although the lunatic be dead. *Bro. Cha. Rep. vol. 3. p. 238.*

A commission may be sued out against a lunatic resident abroad, and may be executed where his mansion-house was. *Ambler's Rep. 109.*

By 15 Geo. 3. c. 30. it is enacted, that the marriage of a person duly found a lunatic, shall be null and void, unless he be previously declared sane by the Lord Chancellor, or his trustees.

No appeal lies from an order of the Lord Chancellor touching lunatics, to the House of Lords, but only to the King in council.

Trustees or committees never have any allowance made them for their trouble; but under circumstances, the court will increase the allowance for maintenance, which will answer the allowance for trouble. *Ambler's Reports 78.*

Ideots and lunatics sue by the committees of their estates; and they defend also by their committees, who are by order of court appointed guardians for that purpose as a matter of course.

If an ideot or lunatic has no committee, or the committee has an interest opposite to that of the lunatic, an order may be obtained for appointing another person as guardian for the purpose of defending a suit. So if a person who is an ideot or lunatic, though not found such by *inquisition*, is made a defendant, the court will direct a guardian to be appointed.

Persons being ideots, lunatics, or *non compos mentis*, who are seised or possessed of estates in fee, or for life or years, in trust, or by way of mortgage, are enabled to make conveyances or assignments of such estates, in such manner as the Lord Chancellor shall direct, on hearing of the persons for whom such ideots or lunatics shall be seised in trust (*a*); so lunatics are enabled by statute (*b*) to surrender leases, in order to renew the same under the direction of a court of equity.

Award.

BY 9 & 10 W. 3. c. 15. in matters in which there is no remedy but by personal action or suit in equity, parties may agree that their submission to an award be made a rule of any of his Majesty's courts of record, and insert such agreement in their submission; which agreement so inserted, shall, on affidavit read and filed in court, be made of record, and a rule of court shall be, that the parties be concluded by such award; and if they refuse to obey it, process of contempt to a rule of court shall issue, and not be stayed by any other court of law or equity, unless it appear on oath, that the arbitrators misbehaved themselves, and that such award was procured by corruption or undue means: but an award by corruption or undue means shall be set aside by any court of law or equity, so as complaint be made in the court where the rule was made for such submission, before the last day of the next term after the award published. By virtue of the above statute, a submission to an award shall be made a rule of equity, as well as of the courts of law. *Com. Dig. tit. Award.*

(*a*) *Vide* 4 Geo. 2. c. 10.

(*b*) 29 Geo. 2. c. 31.

This court will relieve where the award appears to be unreasonable, or where it appears the arbitrators mistook the fact or the law. 2 *Ver.* 705.

Exceptions will lie to an award, but they must be to matters on the face of it, and not to matters of fact, of which the arbitrators are the proper judges.

Where a matter *in a cause* is referred, the party cannot except to the award, but it must come on upon further directions. *Bro. Cha. Rep.* p. 398.

If the objection arises from matter *dehors* the award, it must be made on motion and affidavit.

When there is a non-performance of an award, the proper motion is, that the party may stand committed; not for an attachment; but the notice of motion must be personally served. *Bro. Cha. Rep.* vol. 3. p. 358.

Paying and receiving Money in Court.

BY 12 *Geo.* 1. c. 32. money decreed to be paid into this court, must be paid into the Bank, with the privity of the *Accountant-General* of this court, and placed to the credit of the cause.

In order to pay money into court, the decree and an office-copy of the Master's report, if the money is stated therefrom, must be left with the *Accountant-General*, who will deliver the necessary tickets to the solicitor, who must take them to the *Bank*, where the Chancery clerk will fill up a receipt on the money being paid to him, which receipt must be taken to the office of the *Accountant-General*, who will file a certificate of the payment in the *Report-office*, and procure the solicitor an office-copy of it.

Any of the parties may apply to the court, that such money may be placed out on government securities, for the benefit of the parties interested in the cause.

When any of the parties, or other persons, want to have their money, which is reported due to them, you must first give *personal* notice to all the parties, that you intend to move the court; and upon producing the *Accountant-General's* certificate, and the Master's report, the court will order it. Then carry instructions to the Register to draw up the order, get it passed and entered (it need not be served), then procure a certificate from the *Report-Office*; take the order and certificate to the *Accountant-General's Office*, who will give you a cheque note on the Bank, which get entered in the *Report-Office*, and then any of the registers, upon seeing the
the

the order, will sign the note *gratis*; and after that you must go to the Bank to receive the money.

None but the parties, or their legal representatives, can obtain this note; for representatives must make it appear that they are such, by producing their letters of administration, or probate of the will, as the case shall be; yet if the person to whom the money is due, cannot conveniently attend to receive it himself, he must execute a letter of attorney, authorising some person to receive the money, and upon affidavit of the execution thereof, thereto annexed, and leaving the letter of attorney with the accountant-general, he will give the note to the attorney thereby appointed.

If you apply to the Court for money due to an *infant* upon his coming of age, you must present a petition for that purpose, to the Master of the Rolls, which must be *personally* served on all the parties concerned; and besides the accountant-general's certificate, and the Master's report, you must produce at the hearing of the petition, a proper affidavit, and certificate of the infant's being of age; for which you must apply to the clerk, church-wardens, or minister of the parish, where the infant was born and baptized, or an extract from the book of Births and Christenings, of the birth and christening of the infant, on a double 6 *d.* stamp sheet of paper, and then underwrite a proper affidavit, this will save half a crown, by preventing the certificate being annexed, and thereby made an exhibit.

Motion to pay money into court refused, the affidavit not specifying the sum in defendant's hands. *Bro. Cha. Rep. v. 1. p. 57.*

Money in the funds belonging to wards, cannot be transferred into the name of the accountant-general, to the credit of the cause, until an account is taken by a Master, and his report made. *Bro. Cha. Rep. v. 1. p. 56.*

Court will retain monies decreed to parties, on the application of persons having claims upon them. *Bro. Ch. Rep. v. p. 430.*

Where money has been ordered to be paid, the motion is, that the party shall pay it by a short day, or stand committed.

Prerogative probate necessary, when the sum exceeds 30 *l.* in order for the accountant-general to pay money out of court. Inferior sums are paid upon the probate of the ordinary of the diocese only.

Affidavits.

AFFIDAVITS must be wrote on treble 6*d.* stamps (except paupers') and must be signed on the left side, and the jurat on the right.

All affidavits must be filed with the clerk of the affidavits, in *Staples Inn*, an office copy whereof, made and signed by him, is to be read in court; for expedition you may copy the affidavit yourself, which he will mark, on filing the original; all affidavits to ground a motion on, ought to be filed long enough for the other party to take a copy of it.

Petitions.

APETITION is the request of a party, directed to the Lord Chancellor or Master of the Rolls, ingrossed on treble 6*d.* stamps, praying some direction or order, which you leave with the secretary of the Lord Chancellor or Master of the Rolls, to be answered, for which you pay 5*s.* 6*d.*

Matters of great consequence may be brought before the court on a petition; but petitions for matters of course are usually preferred to the Master of the Rolls, if not of course, to either.

When an order is made on a petition, and the adverse party would discharge such order, or have any thing done touching the matter of such petition, he commonly applies by petition also; but oftentimes the Court will do it on motion.

When a petition is answered, carry it to one of the Registers to have the order drawn up thereon, which you must afterwards get passed, entered and served.

Motions.

AMOTION is likewise a request of one or more of the parties, made by counsel, *ore tenus*, sometimes for matters of course, sometimes for special matters.

On motions of course, no notice of the motion is necessary: but motions on special matters are seldom granted, unless notice of the motion has been given, and an affidavit of the service thereof, made and filed; these notices must be in writing, and should express *every thing* the party moves for,

for, and must be signed with the name of the clerk in court, or solicitor, else they are not good; they may be served on the adverse party; but it is most usual to serve them on the adverse party's clerk in court, by leaving them with his clerk or agent, at his seat in the six clerks office, who will send them to the solicitor or solicitors, and they must be served two days before the day mentioned for moving; as if motion is to be made on *Thursday*, the notice must be given on *Tuesday*, *Sunday* is not a day in court; therefore for motion on *Monday*, notice should be given on *Friday*.

If a notice be given thrice, and not moved, the adverse party producing the three notices served, may pray costs for the former three, as he may have see'd counsel, &c. before the fourth shall be moved.

If an order is obtained by motion or petition, on a false suggestion, the adverse party may move to set aside the order.

Orders.

ALL orders are drawn up, passed and entered by the Register. If an order is only on one side, the entering clerk will enter it by a copy, (1 s. 6 d.) but if more than one side, leave the original order with him to be entered, and afterwards call at his seat for it; for 6d. expedition he will enter it the sooner, if required.

The Register is not to draw up any order grounded on an affidavit unless the affidavit be first filed.

All orders, except final and decretal ones, should be entered in 8 days after pronounced; but this rule is dispensed with, and if entered that term it is sufficient; if not entered in time, and you should afterwards want it entered, move or petition to enter it *nunc pro tunc*.

Where an order is made upon hearing counsel of both sides, there is no occasion to serve it. *Moseley 202.*

Of Certificates.

CERTIFICATES are had of the six clerks, of *plaintiff's not proceeding after answer filed*, upon which you move to dismiss the bill, *also of publication being passed*, in order to set down the cause, &c. of the register, *that no cause is shewn to an order*, &c.

The Court will not suffer any averment against the Master's certificate. *Sel. Cas. in Chanc.* 5.

Costs.

A CAUSE was brought on upon bill and answer, and it appearing to be vexatious, and the plaintiff not having replied to the answers merely to avoid costs, the question was, whether the Court could give full costs or only 40s. The Lord Chancellor said, that in such cases the Court would not hold itself bound by the rule of 40s. costs, but would give the whole costs of the vexatious suit. 1 *Bro.* 403.

In cases of dismissal upon *bill and answer*, it is a hardship upon the defendant to be put to great expences with motions, &c. and yet not be allowed more than 40s. costs: and therefore the rule is now, that when the cause is set down upon bill and answer, or where it is so set down after withdrawing a replication, it is left to the discretion of the Court, according to the merits, to dismiss the bill with 40s. costs, or costs to be taxed by a Master, or without costs.

If the plaintiff dismiss his own bill, or the defendant dismiss it for want of prosecution, the plaintiff must pay full costs. 5 *Ann. c.* 16.

Where a plaintiff is absurd enough to refuse a fair offer of accommodation, and obstinately persists in his suit, it is an aggravation, and the bill will be dismissed with costs. 2 *Atk.* 48.

Where a defendant in *contempt* puts in an answer without paying the costs of the process of contempt, and the plaintiff replies thereto, he loses the costs. *Pract. Reg.* 116.

An executor who ought to have been plaintiff, but made a defendant, was allowed his costs. *Bro. Ch. Rep. v.* 3. *Blount v. Burrow.*

Where an heir at law is defendant, he shall have his costs, but when he is plaintiff, and vexatious, he shall pay them. *id.* *Seal v. Brownter.*

Where a testator expresses himself so ambiguously as to make a suit in this court necessary, the costs shall be paid out of his general assets. *id.* *Jolliffe v. East.*

Costs dying with Party.

WHEN a bill is dismissed with costs, and nothing is done by the decree, but giving the costs; and nothing remaining to be done, by death of the party before the costs are taxed, they being a personal injury, die with the person and are lost, and there cannot be a bill of revivor for costs alone. *Sel. Cas. in Chan.* 54. if taxed there may. See *Sel. Cas. in Chan.* 21. The difference is, whether there hath been a taxation or not, the right is as certain before taxation as after; and there are several exceptions thereto; as where costs are connected with a duty, or where they are given out of a particular fund, though nothing more is to be done here, and the party dies; still costs shall be paid out of that fund, and wherever the Court sees a reasonable foundation for going out of the general rule, they always will; in order to answer the justice of the case, 2 *Vez.* 580, 581.

Solicitor's Fees and Bills of Costs.

SOLICITORS not to commence suit for fees, charges or disbursements, till one month after delivery of a bill signed; no money to be brought into court on reference of bills to be taxed. 2 *Geo.* 2. c. 23. s. 23. *Mof.* 68. pl. 40. but representative of a solicitor need not so deliver or sign his bill, 2 *Vin. Ab.* 301. pl. 7. Solicitor may retain papers received of his client *previous but not subsequent* to the bankruptcy, and not to come under commission, 7 *Vin. Abr.* 74. pl. 8. Solicitor carrying on suits for assignees of bankrupt, without authority of 5 *Geo.* 2. c. 30. s. 38. creditors not liable but assignees only, and they personally so, *Atk.* 210. pl. 116. 2 *Geo.* 2. c. 23. s. 23. does not extend to solicitors, on their clients becoming bankrupts, see *Mof. Rep.* 27. pl. 13. Country client employs solicitor in country, who employs clerk in *Chancery*, client not bound to pay clerk, but if he hath any papers he may retain them till paid, *Barnard Chan. Rep.* 264, 265. same as to a fix clerk, 3 *Atk.* 727. pl. 279. 2 *Vez.* 111. pl. 42. 2 *Geo.* 2. c. 23. does not extend to bills of fees, &c. from one solicitor to another, or clerk in court. 12 *G.* 2. c. 13. s. 6. Solicitor decreed his bill out of the profits of a term of years, 4 *Vin. Abr.* 103. pl. 18. out of money lodged in *Chancery*, for benefit of infants, *Mof.* 319. out of a duty decreed, before bond creditors, 3 *Atk.* 720. pl. 269. out of fund,

fund, whether in suit, lunacy, or bankruptcy, 2 *Vez.* 407. *pl.* 131. not obliged to deliver title deeds till paid, *Mos.* 12, 13. 8 *Mod.* 306. *R. Raym.* 738. No injunction against a verdict for fees, 4 *Vin. Abr.* 103. *pl.* 20. 2 *Eq. Ca. Abr.* 524. *pl.* 6.

Of admitting a Solicitor.

THE day of admittance is the day after the last day of term before the Master of the Rolls, at nine o'clock in the morning.

You must procure the certificate of two barristers, and clerk in court, of your being qualified to practise, and you must afterwards make an affidavit of seeing the certificate signed, both of which must be taken to the Master of the Rolls's secretary.

Form of the Certificate.

WE do hereby certify that A. B. of, &c. late of, &c. Gent. a sworn attorney of his Majesty's Court of K. B. is a person of integrity and abilities, and well qualified to be admitted a solicitor in his Majesty's High Court of Chancery. Witness our hands the — day of — 1793.

Form of the Affidavit.

A. B. of, &c. late of, &c. maketh oath and saith, that he did see C. D. and E. F. two practising barristers at law, and G. H. one of the sworn clerks of this Honourable Court, respectively set their names to the above certificate, and that the names or signatures of — and — clerk in court, are the respective hands writing of the said C. D. Esq; E. F. Esq; and G. H. Gentleman.

This affidavit must be on the same paper as the certificate.

Masters Extraordinary

ARE appointed under a commission of this Court, for the taking of affidavits in the country, and are generally practitioners of eminence and reputation resident there; for

for it is necessary for those who are desirous to procure this appointment, in the first place, to get a certificate signed by two barristers and a clerk in court, that he is a person qualified for the office, and also a certificate signed by three justices of the peace, or counsellors, whereof a mayor may be one, or a doctor of divinity, or by other respectable persons, that there is occasion for a Master Extraordinary; which last certificate may be to the effect following:

To the Right Honourable the Lord High Chancellor of Great Britain.

WE whose names are hereunto subscribed, viz. A. B. of the parish of C. in the county of D. and E. F. of, &c. and I. K. of, &c. being three of his Majesty's justices of the peace for the said county of D. do humbly certify unto your Lordship, that L. M. of the parish of N. in the county aforesaid, is a person well qualified to be a Master of Chancery for taking of affidavits in the said county; and that there is occasion for a Master extraordinary in the said place where he dwells, there being never a Master extraordinary near that place; and that the said L. M. is a person well affected to his present Majesty and Government. Witness our hands this — day of — in the year of our Lord one thousand seven hundred and ninety-four, and in the thirty-fourth year of the reign of his majesty king George the Third.

A. B.
E. F.
I. K.

This certificate the candidate for this appointment must carry to one of the Lord Chancellor's gentlemen who procures a *fiat* to be signed under the certificate, by his Lordship; which must be carried to the clerk of the crown, in the *Rolls yard*, who makes out a commission, appointing such person to be a Master Extraordinary. The fees thereof are about seven guineas.

The Master Extraordinary must, within a month after the date of the commission, take the oaths of allegiance and supremacy, which he may do in *London*.

If the person to be appointed a Master Extraordinary is to be sworn in as such in the country, the clerk of the crown makes out a *dedimus* directed to four commissioners, with the oaths of allegiance and supremacy, to be administered to the party; which being administered, the commissioners

missioners return the commission, with an attestation of the execution on the back thereof, signed by them, to the clerk of the Petty-bag, who thereupon makes out a certificate thereof. The fees, when by commission in the country, are about nine pounds.

Such Masters are not to act within twenty miles of *London*; and that it may appear whether they do or not, they are, in the *caption* (which is the Master's *certificate*) to express the name of the town and county where they shall take any affidavit, otherwise the same shall not be held authentic, nor be admitted to be filed. *Pract. Reg.* 243.

A T A B L E

Of the Days of hearing Causes, Motions, &c. before the Lord Chancellor, and the Master of the Rolls.

By the Lord Chan.

TERM TIME.

Causēs. { EVERY *Monday, Tuesday, Wednesday* and *Friday* in the morning, are days for hearing causes at *Westminster* by the Lord Chancellor.

The Seals. { There are usually two seals before, and four after *Hilary* term; two before *Easter* term, and one after *Easter* term, and before *Whitsuntide*; one after *Whitsuntide*, and before *Trinity* term, and four after *Trinity* term; two before and four after *Michaelmas* term.

Seal Days. { Every *Tuesday, Thursday* and *Saturday* in term are seal days, and
The first and last days of the term are days for sealing writs, and motions only.

Motions. { Every *Thursday* in term is a day for motions, except in the *first* and *last* week of the term, and then it is a day for causes.
All the days in the term when the Court sits, are days for common motions which are moved after the causes are heard, just before the rising of the Court.

VACATION.

Motions in the Vacation { In the vacation, the general seal days only, as appointed by Lord Chancellor, are days for motions only.
No motions are heard after the last general seal.

Rehearings. { Every *Saturday* in term is a day for rehearings and appeals, unless when *Saturday* happens to be the day next before the last day of term, for on that day, whether *Saturday*, or any other day, the register makes out a paper of short causes.

Exceptions, Pleas, and Demurrers. { *Wednesdays* and *Fridays* in the afternoon in term, Lord Chancellor sits in *Lincoln's Inn Hall* on exceptions, pleas and demurrers.

Petitions.

T A B L E.

Petitions. { The next day after the last seal, both before and after term, is usually appointed for petitions; there are also other days for petitions, usually appointed by Lord Chancellor.

AT THE ROLLS.

TERM TIME.

Causes. { Every *Monday, Tuesday, Thursday* and *Saturday* are days for hearing causes at the *Rolls*, by the Master of the *Rolls* in the afternoon.

Pauper Causes. { Formerly the second *Saturday* in every term was appointed for hearing *pauper* causes; but for several years the *pauper* causes have been set down promiscuously with the other causes, and are heard in course with them.

VACATION.

Causes after Term. { The first week after the term, Master of the *Rolls* sits all the mornings on causes, and after the first seal till the last in the afternoons, except on *Saturdays* and seal days.

Petitions. { There is also a day of petitions at the *Rolls* after term, which his Honor appoints usually the day before every term, the day after term, and the day after every last seal day after term.

Motions. { The next morning after the term, motions are allowed to be made at the *Rolls*.

APPENDIX.

THERE are nine several parts in a bill in Chancery.

1st. The direction of the bill, containing the title of the judge and stile of the court, which is to the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal. When directed to the Lord Chancellor, the title is, "*To the Right Honorable E. Lord T. Baron T. of A. in the county of S. Lord High Chancellor of Great-Britain.*" If to a Lord Keeper, "*To the Right Honorable Sir R. N. Knt. Lord Keeper of the Great Seal of Great-Britain.*" If the seal is in commission, "*To the Right Honorable A. Lord L. Baron of L. in the county of L. Sir W. H. A. Knt. and Sir B. N. Knt. Lords Commissioners for the custody of the Great Seal of Great-Britain.*"

2^d. The introduction, containing the complainant's name and place of residence, with his addition, as "*humbly complaining, sheweth unto your Lordship your orator — of, &c. Esq. that, &c.*"

3^d. The premises by way of recital, stating the complainant's rights by way of case.

4th. The allegations or suggestions of the bill.

5th. The complaint of fraud, &c. being a general charge of combination and confederacy, except in the case of a peer. The words are, "*But now so it is, &c.*"

6th. The clause that gives cognizance in equity, beginning thus: "*In tender consideration whereof, &c.*"

7th. The interrogating part, which is preceded by the following words, "*To the end therefore, &c.*"

8th. The prayer of the bill.

9th. The conclusion, which is in the following words: "*May it please your Lordship, the premises considered, to grant unto your orator, not only his Majesty's most gracious writ of injunction issuing out of and under the seal of this honorable Court, to be directed to the said A. B. to restrain him from proceeding at law against your orator, touching any of the matters in question, but also his Majesty's most gracious writ or writs of subpœna to be directed to the said A. B. and to the rest of the confederates when discovered, thereby commanding them and every of them, at a certain day and under*"

“ a certain pain therein to be limited, personally to be and
 “ appear before your Lordship in this honorable court, and
 “ then and there full, true, direct and perfect answer make to
 “ all and singular the premises, and further to stand to, per-
 “ form, and abide such further order, direction, and decree
 “ therein, as to your Lordship shall seem meet. And your
 “ orator shall ever pray, &c.”

The praying an injunction by proper words may be seen by the prayer of the bill, and which are to be varied accordingly; but if no injunction be prayed, then the words in *italics* must be omitted.

If defendant be a peer, a letter missive must be prayed, in these words, preceding the process of *subpœna*, *to grant unto your orator your Lordship's letter missive, to be directed to the said Earl of B. desiring him to appear to and answer your orator's said bill, or in default thereof his Majesty's most gracious writ or writs of subpœna, &c.*

Præcipe for a Subpœna.

Subpœna. *A. B.* to appear in Chancery, returnable —
 at the suit of *C. D.* and others.

E. F. Solicitor.

2d July, 1794.

Petition for a Subpœna returnable immediately.

In Chancery.

Between { *A. B.* plaintiff.
 and
 C. D. defendant.

To the Right Honorable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

THAT your petitioner having filed his bill in this honorable court against the said defendant, and the said defendant living and residing within — miles of the city of *London*, as by the affidavit annexed appears;

Your petitioner therefore most humbly prays your Honor, that he may be at liberty to take out process of *subpœna* for the said defendant to appear to and answer your petitioner's said bill, returnable immediately.

And your petitioner shall ever pray, &c.

Affidavit of Defendant's Residence to obtain Subpoena returnable immediately.

In Chancery.

Between { *A. B.* plaintiff.
and
C. D. defendant.

E. F. clerk to *G. N.* of, &c. Gent. maketh oath, That the defendant *C. D.* lives in *King-street*, in the city of *London*.

E. F.

Sworn, &c.

But if defendant lives within 10 miles of *London*, then the affidavit is thus:—

E. F. &c. maketh oath, That the defendant *C. D.* lives at —, which place is about — miles distant from *London*.

E. F.

Sworn, &c.

Petition that defendant may accept plaintiff's bill NUNC PRO TUNC, upon payment of costs.

In Chancery.

Between { *A. B.* plaintiff,
and
C. D. defendant.

To the Right Honorable the Master of the Rolls;

The humble petition of the plaintiff,

Sheweth,

THAT your petitioner having exhibited his bill in this honorable court against the defendant, thereby praying (among other things) for an injunction, &c. and having served the defendant with process to appear and answer the same, the said defendant appeared accordingly; but your petitioner's bill not being at the exact day, though in a very few days

days after filed, the defendant's clerk in court refuses to accept the same, and insists upon costs.

Wherefore your petitioner humbly prays your Honor, that the defendant's clerk in court may be ordered to accept your petitioner's bill upon payment of costs out of purse.

And your petitioner, &c.

Affidavit of serving Subpœna.

In Chancery,

Between { *A. B.* - - - Plaintiff,
 { *C. D.* and others Defendants.

E. F. of, &c. maketh oath, that he this deponent did on the — day of — last past, serve the defendant *C. D.* with a subpœna issuing out of and under the seal of this honourable court, by delivering the body of the said subpœna so under seal as aforesaid, unto the said *C. D.* by which said subpœna the said defendant *E. F.* was commanded to appear in this honourable court the — day of — at the suit of the abovenamed *A. B.* as appeared unto this deponent by the label of the said subpœna.

E. F.

Sworn, &c.

If not personally served, then say,

— by leaving (or delivering) the body of the said subpœna so under seal as aforesaid, at the said defendant's house, with his wife (or servant) there —

Where there are several Defendants.

E. F. of, &c. maketh oath, that he this deponent did on the — day of — last past, personally serve the defendant *C. D.* with a subpœna issuing out of and under the seal of this honourable court, by delivering unto the said defendant a label of the said subpœna, and this deponent did at the same time shew unto the said defendant the body of the said subpœna so under seal as aforesaid; and this deponent saith, he did on the same day personally serve the defendant
G. H.

G. H. with the said subpcena by delivering to him another label of the said subpcena, and at the same time shewing him the body of the said subpcena so under seal as aforesaid; and this deponent further saith, that he did on the — day of — instant, serve the defendant *L. M.* with the said subpcena, by leaving the body of the said subpcena so under seal as aforesaid, at the dwelling house of the said *L. M.* with a person who informed this deponent she was the servant of the said *L. M.* by which subpcena the said several defendants were directed to appear in this honourable court the — day of — at the suit of the said *A. B.* as appeared to this deponent by the said labels of the said subpcena, and this deponent further saith, that he did on the — day of — serve the defendant *N. O.* with another subpcena issuing out of and under, &c.

*Proceedings to take a Bill pro confesso under 5 Geo. 2.
against a Defendant who absconds.*

In Chancery,

Between { *A. B.* Plaintiff,
and
C. D. Defendant.

O. D. of, &c. maketh oath, that a subpcena being issued out of and under the seal of this honourable court against the said *C. D.* whereby the said defendant was required to appear in this court on the 12th day of *March* instant, at the suit of the said complainant as appeared to this deponent by the label of the said subpcena, he this deponent several times between the 1st day of *March* instant and the return of the said subpcena, made inquiry after the said defendant in order to serve him with the said subpcena, and found that the said defendant had absconded from the usual place of his abode at *Islington* in the county of *Middlesex*. And this deponent further saith, that he has been informed by *F. G.* of, &c. and believes the same to be true, that the said defendant was gone off or absconded for fear of being served with the process of this or any other court.

Sworn, &c.

Between $\left\{ \begin{array}{l} A. B. \text{ Plaintiff,} \\ \text{and} \\ C. D. \text{ Defendant.} \end{array} \right.$

To the Right Hon. the Master of the Rolls.

The Humble Petition of the Plaintiff.

SHEWETH,

THAT your petitioner having filed his bill in this honourable court against the defendant *C. D.* on the 18th day of *February* last, as by the fix clerk's certificate appears, took out process then against the said defendant, to compel him to appear thereto, returnable the 12th day of *March*, and endeavoured to serve the said defendant therewith, but was not able so to do, the said defendant absconding to avoid being served therewith, as by the affidavit annexed appears, and in regard the said defendant hath not yet appeared to your petitioner's said bill,

Your petitioner therefore most humbly prays your Honor that the said defendant *C. D.* may be ordered to appear to your petitioner's said bill at some certain day, to be by your Honor appointed for that purpose.

And your petitioner shall ever pray, &c.

Annex to the affidavit and petition the fix clerk's certificate of the bill being filed.

In Chancery,

Between $\left\{ \begin{array}{l} A. B. \text{ Plaintiff,} \\ \text{and} \\ C. D. \text{ Defendant,} \end{array} \right.$

O. *D.* of, &c. gent. maketh oath, that an order of this honourable court in the words and figures following, (to wit) "*Tuesday* the — day of — in the — year of " the reign of his majesty king *George* the Third, 1794, between *A. B.* gent. plaintiff, and *C. D.* defendant, upon " the plaintiff's humble petition this day preferred unto " the Right Honourable the Master of the Rolls, for the " reasons therein, and in the affidavit therein mentioned and " contained, it is ordered, that the defendant *C. D.* do appear

“pear to the plaintiff’s bill on or before the 1st day of next
“term” was read and published by Mr. *A. B.* the minister
of — in the said county of — on the — day of —
last past, being the *Lord’s Day*, immediately after divine ser-
vice, in the parish church of — in the said county of —
being the parish where the said defendant *C. D.* made his
usual abode, within 30 days, as this deponent verily believes
next before his absconding himself, and absconding to avoid
being served with the process of this or any other court.

Sworn, &c.

In Chancery,

Between { *A. B.* Plaintiff,
and
C. D. Defendant.

F. *R.* agent to Mr. *O. D.* of the six clerks’ office *London*,
gent. maketh oath, that he this deponent did on the
— day of *March* last past, post up and affix with paste
against one of the public stone pillars on the *Royal Exchange*
in *London*, a true copy of an order of this honourable court
in the words and figures following, (to wit) “*Thursday*,
“&c. It is ordered, that the defendant *C. D.* do appear to
“the plaintiff’s bill on or before the first day of next term.”

Sworn, &c.

In Chancery,

Between { *A. B.* Plaintiff,
and
C. D. Defendant.

To the Right Honourable the Master of the Rolls.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner in or about — term last exhi-
bited his bill in this honourable court against the said
defendant and took out process of *subpœna* to compel him
to appear and answer there’o.

That said defendant *C. D.* absconding to avoid being serv-
ed with the process of this court, an order was made by your

G 2

Honor

Honor on the — of — last, pursuant to the late act of Parliament made in the 5th year of the reign of his late majesty king *George* the Third, for the defendant *C. D.* to appear to your petitioner's bill on or before the 1st day of the then next term, which order was duly inserted in the *London Gazette*, and published in the parish church of the said defendant, and posted up at the *Royal Exchange*, agreeable to the directions of the said statute; but the defendant *C. D.* hath never yet appeared to your petitioner's said bill.

Your petitioner therefore most humbly prays your Honor that this cause may be set down to be heard before your Honor, in order that your petitioner's bill may be taken *pro confesso*, and that your petitioner's clerk in court may attend the hearing thereof with the record of your petitioner's bill.

And your petitioner shall ever pray, &c.

Between { *A. B.* Plaintiff,
and
 { *C. D.* Defendant.

TH E S E are humbly to certify that the said defendant *C. D.* hath not appeared to the bill of complaint exhibited against him by the said complainant. Dated the — day of — 1794.

T. B. for Plaintiff.

Petition to set down a Plea to be argued.

In Chancery,

Between { *A. B.* Plaintiff,
and
 { *C. D.* Defendant.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble Petition of the Defendant,

SHEWETH,

TH A T the plaintiff having exhibited his bill in this honourable court in this cause, your petitioner put in his plea and answer thereto, which plea the plaintiff hath not yet set down to be argued.

Your petitioner therefore most humbly prays your Honor that the said plea may be set down to be argued next after the pleas and demurrers already set down.

And your petitioner shall ever pray, &c.

The above form will do for setting down a demurrer.

Petition to amend Bill.

In Chancery,

Between { *A. B. Plaintiff,*
 and
 C. D. Defendant.

To the Right Honourable the Master of the Rolls.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner having filed his bill in this honourable court, the defendant hath appeared thereto, but hath not yet answered; and your petitioner is advised to amend his said bill.

Your petitioner therefore humbly prays your Honor that he may be at liberty to amend his said bill, as he shall be advised, without costs, amending the defendant's copy.

And your petitioner shall ever pray, &c.

Petition to amend Bill.

In Chancery,

Between { *C. D. and others, Plaintiffs,*
 and
 E. F. and others, Defendants.

To the Right Honourable the Master of the Rolls.

The humble Petition of the Plaintiffs,

SHEWETH,

THAT your petitioners having exhibited their bill in this honourable court against the said defendant *E. F.* and others, who have all appeared thereto and put in their

answers; on the perusal of which your petitioners are advised to amend their said bill, but shall not require any further answer from the defendants.

Your petitioners therefore most humbly pray your Honor that they may be at liberty to amend their said bill, as they shall be advised, amending the defendant's copies, and requiring no further answer from the said defendants.

And your petitioners shall ever pray, &c.

Petition to amend Bill.

In Chancery,

Between { C. D. and others, Plaintiff,
 { E. F. and others, Defendants.

To the Right Honourable the Master of the Rolls.

The humble Petition of the Plaintiffs

SHÈWETH,

THAT your petitioners having exhibited their bill against the above named defendant *E. F.* and others, the said defendant *E. F.* only hath appeared and put in his answer thereto, (none of the other defendants having yet appeared to the said bill) since which your petitioners are advised to amend their said bill.

Your petitioners therefore humbly pray your Honor that they may be at liberty to amend their said bill as they shall be advised, on payment of 20s. costs to the defendant *E. F.* in respect thereof, and without costs as to the other defendants.

And your petitioners shall ever pray, &c.

Petition to take the Answer of a Defendant without Oath.

In Chancery,

Between { C. D. and others, Plaintiffs,
and
E. F. and others, Defendants.

To the Right Honourable the Master of the Rolls.

The humble Petition of the Plaintiffs

SHEWETH,

THAT your petitioners having filed their bill in this honourable court against the above named defendant and others, they are willing to take the answer of the said defendant E. F. without oath.

Your petitioners therefore most humbly pray your Honor that the said defendant E. F. may be at liberty to put in his answer to your petitioners' said bill, without oath.

And your petitioners shall ever pray, &c.

Petition for a Month's Time to answer in a Town Cause.

In Chancery,

Between { A. B. Plaintiff,
and
C. D. Defendant.

To the Right Honourable the Master of the Rolls.

The humble Petition of the above-named Defendant

SHEWETH,

THAT the plaintiff hath filed his bill in this honourable court against your petitioner, your petitioner hath appeared thereto, and hath taken a copy thereof.

That your petitioner is not in contempt, nor hath he yet had any order for time.

Your petitioner therefore humbly prays your Honor that he may have a month's time to plead, answer, or demur to the plaintiff's bill.

And your petitioner shall ever pray, &c.

Petition for three Weeks further Time.

In Chancery,

Between { A. B. Plaintiff,
and
C. D. Defendant.

*To the Right Honourable the Master of the Rolls.**The humble Petition, &c.*

SHEWETH,

THAT the plaintiff hath filed his bill in this honourable court against your petitioner, to which your petitioner hath appeared, and taken a copy thereof.

That your petitioner hath had but one order for time, and is not in contempt.

Your petitioner therefore humbly prays your Honor that he may have three weeks further time to plead, answer, or demur to the plaintiff's bill.

*And your petitioner shall ever pray, &c.**Petition for a Fortnight's further Time.*

In Chancery,

Between { A. B. Plaintiff,
and
C. D. Defendant.

*To the Right Honourable the Master of the Rolls.**The humble Petition, &c.*

SHEWETH,

THAT the plaintiff hath filed his bill, &c.

That your petitioner hath had two orders for time, and is not in contempt.

Your petitioner therefore most humbly prays your Honor that he may have a fortnight's further time to plead, answer, or demur.

And your petitioner shall ever pray, &c.

N. B. The defendant's clerk in court must sign a consent at the foot of this petition not to pray any further time.

Petition for six Weeks Time to answer, in a Country Cause.

In Chancery.

Between { A. B. Plaintiff,
and
C. D. Defendant.

To the Right Honorable the Master of the Rolls.

The humble Petition of the above-named Defendant,

SHEWETH,

THAT the plaintiff hath lately filed his bill in this honorable court against your petitioner, to which your petitioner hath appeared, and taken a copy, but hath not been able to put in his answer by the time limited by the rules of the court.

That your petitioner is not in contempt; resides at *Bedford*, and hath as yet had no order for time.

Your petitioner therefore most humbly prays your Honor, that he may have six weeks time to plead, answer, or demur to the plaintiff's bill.

And your petitioner shall ever pray, &c.

Petition for a Month's further Time.

In Chancery.

Between { A. B. Plaintiff,
and
C. D. Defendant.

To the Right Honorable the Master of the Rolls.

The humble Petition of the above-named Defendant,

SHEWETH,

THAT the plaintiff hath lately filed his bill in this honorable court against your petitioner, to which your petitioner hath appeared, and hath taken a copy.

That your petitioner resides at *Bedford*; hath had but one order for six weeks time to answer, and is not in contempt.

Your petitioner therefore humbly prays your Honor, that he may have a month's further time to plead, answer, or demur to the plaintiff's bill.

And your petitioner shall ever pray, &c.

Petition for three Weeks further Time.

In Chancery.

Between { A. B. Plaintiff.
and
C. D. Defendant.

*To the Right Honorable the Master of the Rolls.**The humble Petition of the above-named Defendant,*

SHEWETH,

THAT the plaintiff hath filed his bill in this honorable court, &c.

That your petitioner resides at *Bedford*; hath had but two orders for time, and is not in contempt.

Your petitioner therefore humbly prays your Honor, that he may have a commission to take his plea, answer, or demurrer to the plaintiff's bill, and that the plaintiff may, in two days after notice thereof, join in commission; or in default thereof, that your petitioner may have such commission to his own commissioners, and that your petitioner may have three weeks time to return the same.

And your petitioner shall ever pray, &c.

N. B. The commission may be prayed for by either the first or second petition.

Petition that a Feme Covert may answer separate from her Husband.

In Chancery.

Between { A. B. Plaintiff.
and
C. D. and F. his Wife, Defendants.

*To the Right Honorable the Master of the Rolls.**The humble Petition of the said F. the Wife of the Defendant C. D.*

SHEWETH,

THAT the plaintiff has exhibited his bill in this honorable court against your petitioner and her said husband, to which your petitioner hath appeared.

Your

Your petitioner most humbly prays your Honor, that she may be at liberty to put in her answer to the plaintiff's said bill, separate from her husband.

And your petitioner will ever pray, &c.

Conclusion to an Answer.

AND this defendant denies all and all manner of unlawful combination and confederacy wherewith he is charged, without that, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained, material or effectual in the law, for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, avoided, traversed, or denied is true, to the knowledge and belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in the law, in this behalf most wrongfully sustained.

Notice of executing a Commission to take an Answer.

WE whose names are hereunto subscribed, having received a commission issuing out of the high court of Chancery, to us and others directed, to take the answer of *C. D.* defendant, to the bill of complaint of *A. B.* complainant, we do hereby give you notice, that we intend to execute the said commission, on — the — day of —, at the house of —, in *D.* in the county of *E.* at which time and place, you with your commissioners may be present, if you think fit. Given under our hands this — day of, &c.

To Mr. *E. F.*
Plaintiff's Commissioner,

{ *G. H.*
{ *J. K.*

Defendant having signed his answer, the commissioners say, Have you heard this your answer read, and do you exhibit it as your answer to the bill of complaint of — to which the defendant must answer Yes; then one of the commissioners administers the following oath:

You shall swear, that what is contained in this your answer, as far as concerns your own act and deed, is true to
I your

your own knowledge; and what relates to the act and deed of any other person or persons, you believe to be true,

So help you GOD.

The Caption which is to be written at the Foot of the Answer.

This answer was taken, and the above-named C. D. defendant was duly sworn to the truth thereof, upon the Holy Evangelists, at the house of — situate in the parish of — in the county of — on the — day of — in the 34th year of the reign of his majesty king George the Third, and in the year of our Lord 1794, by virtue of the commission hereunto annexed, before us,

G. H.

I. K.

Indorse the Return about the Middle of the Commission; as follows:

The execution of this commission appears in a certain schedule (or schedules, if more than one skin) hereunto annexed,

G. H.

I. K.

N. B. Vary the caption according to what is to be taken, as plea and answer; thus,

This plea and answer were taken, and the above named defendant, &c.

Caption of Plea, Answer, and Demurrer.

This plea and answer were taken on the defendant's oath upon the Holy Evangelists, and this demurrer of the said defendant was taken without oath, at the house of, &c.

The answer must be annexed to the commission, which must be folded up and bound round with tape, and then the commissioners must put their names and seals to it, and one of them must either bring or send it to London to be filed.

Caption of a Quaker's Answer.

This answer was taken upon the solemn affirmation of the said *A. B.* at, &c.

Caption of the Answer of a spiritual Corporation.

This answer of the above named defendants, the dean and chapter of the cathedral church of — was taken under the common seal of the said dean and chapter, as by the said seal affixed appears, at, &c.

Ditto of a temporal Corporation.

This answer of the above named defendants, the mayor, aldermen, and common council of the city of — was taken under the common seal of the said corporation, as by the said seal affixed appears, at, &c.

Caption of a Peer's Answer.

This answer was taken upon the attestation of honour of the above-named defendant, the Earl of — at, &c.

Commissioner's Certificate of the Appointment of a Guardian to an Infant.

In Chancery,

Between { *A. B.* - - - Plaintiff, and
 { *C. D.* and others Defendants.

To the Right Honourable the Lord High Chancellor of Great Britain.

WE whose names are hereunto subscribed, in pursuance of a commission to us and others directed, have caused *E. F.* the infant to come before us, who chose *G. H.* of — in the county of — gent. to be his guardian, to defend

defend this suit on his behalf, and we have assigned and appointed the said *G. H.* to be his guardian accordingly, at the house of — in — in the county of — on the — day of — 1792, by virtue of the commission hereunto annexed.

I. K.
L. M.

Caption of an Infant's Answer by his Guardian already assigned.

This answer was taken, and the above-named *G. H.* gent. as guardian already assigned to the said *E. F.* the infant, was duly sworn to the truth thereof upon the Holy Evangelists, at the house of — in — in the parish of — in the county of — on the — day of — 1792, by virtue of the commission hereunto annexed before us,

I. K.
L. M.

Certificate of the Appointment of a Guardian, and Caption of the Answer by such Guardian.

To the Right Honourable the Lord High Chancellor of Great Britain.

WE whose names are hereunto subscribed, in pursuance of the commission hereunto annexed, to us and others directed, did cause *E. F.* the infant in the said commission named, to come before us, who chose *G. H.* of, &c. gent. to be his guardian, to answer and defend this suit on his behalf, and we have assigned the said *G. H.* to be his guardian accordingly, and the said *G. H.* at — in the parish of — in the county of — was this — day of — 1792, sworn upon the Holy Evangelists to the truth of the answer of the said *G. H.* as his guardian, by virtue of the said commission before us,

I. K.
L. M.

N. B. If defendant's commissioner attend, he must subscribe the above certificate.

*Certificate of appointing a Guardian to a Person reduced
by Age to a second Infancy.*

*To the Right Honourable the Lord High Chancellor of Great
Britain.*

WE whose names are hereunto subscribed, humbly
certify unto your Lordship, that by virtue of the
commission annexed, we have called before us the defendant
C. D. therein named, and have assigned and appointed *E. F.*
of, &c. to be his guardian, by whom he may answer and
defend this suit. Witness our hands this — day of —
1792.

I. K.

L. M.

*The Commissioners' Return to a Commission of
Rebellion.*

WE whose names are hereunto subscribed (being two
of the commissioners within named) do humbly cer-
tify to this honorable court that we have made diligent
search and inquiry after the within-named *E. F.* but not-
withstanding all our endeavours for that purpose we cannot
find him, so as to attach his body by virtue of this commis-
sion. Witness our hands this — day of — 1792.

J. K.

L. M.

Petition for a Letter Missive.

In Chancery.

Between { *A. B. Plaintiff,*
 and
 C. Duke of D. Defendant.

To the Right Honourable the Lord High Chancellor of Great-Britain.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner hath exhibited his bill in this honorable court against the said *C. Duke of D.* who in regard to his quality cannot be compelled, by the ordinary process of this court, to appear to your petitioner's said bill.

Your petitioner therefore most humbly prays your Lordship's letter missive, directed to the said *C. Duke of D.* desiring his Grace to appear to your petitioner's said bill on the — day of — next.

And your petitioner shall ever pray, &c.

Petition for Letter Missive for immediate Appearance.

In Chancery.

Between { *A. B. Plaintiff,*
 and
 C. Duke of D. Defendant.

SHEWETH,

THAT your petitioner hath exhibited his bill, &c. That the said defendant lives and resides in --- street, *Piccadilly*, in the county of *Middlesex*, as by the affidavit annexed appears.

Your petitioner therefore most humbly prays your Lordship's letter missive, directed to the said *C. Duke of D.* desiring his Grace to appear to your petitioner's said bill, immediately.

And your petitioner will ever pray, &c.

Affidavit

Affidavit to annex to a Bill of Interpleader.

In Chancery.

Between { *A. B.* Plaintiff,
and
C. D. and others Defendants.

A. B. the complainant in this cause, maketh oath, That he does not exhibit this bill by the consent, knowledge, privity or combination of any or either of the defendants in this bill mentioned, but only of his own free will for relief in this honorable court.

A. B.

Sworn, &c.

Affidavit of Poverty.

Between { *A. B.* Plaintiff,
and
C. D. Defendant.

A. B. the complainant (or *C. D.* the defendant) maketh oath, That he is not worth the sum of five pounds in all the world, his just debts being first paid, and his wearing apparel and the matters in question in this cause only excepted.

A. B.

Sworn, &c.

Affidavit to a Certificate of a Person's being of Age.

May 20, 1767.

A. B. (son or daughter) of *A.* and *C. B.* was baptized. The above is a true copy of the register, of (name the parish). Witness my hand, this --- day of ---, 1767.

E. F. (Clerk of the Parish).

H

In

In Chancery. Between, &c.

D. *E.* of, &c. maketh oath, That the abovementioned * extract, signed by *E. F.* of the parish of afore-said, is a true copy or extract of the register of the said parish, so far as concerns the baptism of *A. B.* And that he this deponent did on the day of examine the said copy or extract, with the said parish register, and that the name *E. F.* set and subscribed thereto, is of the proper hand-writing of the said *E. F.* who set and subscribed his name thereto in this deponent's presence.

D. E.

Sworn, &c.

* Let the clerk of the parish write the above certificate on a treble six-penny stamp sheet of paper, and then under-write the above affidavit; this will save you 2 s. 6 d. for then the certificate will not be an exhibit.

Affidavit of serving of an Order Nisi, to make the same absolute.

In Chancery.

Between { *A. B.* and *J. K.* Plaintiffs,
and
C. D. and *L. R.* Defendants.

D. *D.* clerk to Mr. *R. K.* solicitor for the defendant *C. D.* in this cause, maketh oath, That he this deponent did (*the time when*) personally serve Mr. *F. D.* with an order of this honorable court, made in this cause (*time when the same was made*), whereby it is ordered, that a report made in this cause by Mr. *Leeds*, one of the masters of this honorable court, bearing date first day of *May* last, whereby Mr. *J. J.* on the behalf of the said *C. D.* is reported the best purchaser of the premises therein mentioned, at the sum of 2000 *l.* and all the matters and things therein contained, do stand ratified and confirmed by the order, authority, and decree of this court, to be observed and performed by all parties thereto, according to the tenor and true meaning thereof, unless the parties concerned, who are many in number, and live remote from each other, their respective clerks in court having notice thereof, should, within eight days after such notice, shew unto this court good cause to the contrary, by delivering

livering to the said Mr. *F. D.* a true copy of the said order, and at the same time shewing him the said order passed and entered. And this deponent further saith, That he did afterwards on the same day, personally serve Mr. *G.* with the said order, by delivering to the said Mr. *G.* a true copy of the said order, and at the same time shewing him the said order. And this deponent further saith, That he did afterwards on the same day, personally serve Mr. *H.* with the same order, by delivering to the said Mr. *H.* a true copy of the said order, and at the same time shewing him the said order, which said Mr. *D.* Mr. *G.* and Mr. *H.* are all the clerks in court for the plaintiffs and defendants in this cause, as this deponent is informed and believes. And this deponent further saith, that he did on the same day personally serve Mr. *N.* who by a former report had been reported the best purchaser of the said premises, with the said order, by delivering to the said Mr. *N.* a true copy thereof, and at the same time shewing him the said original order passed and entered.

Sworn, &c.

D. D.

N. B. An order *nisi* requires personal service ; unless the court substitutes a service upon the clerk in court, upon a suggestion that the defendants are many in number, and live remote from each other.

Affidavit of Service of Subpoena to obtain an Injunction.

In Chancery.

Between { *A. B.* Plaintiff,
and
C. D. and *W. K.* Defendants.

C. B. of *New Inn*, in the county of *Middlesex*, Gentleman, maketh oath, That he this deponent did, on the 22d day of *December* last, deliver a label of *subpoena*, under seal of this honorable court, to Mr. *T. H.* clerk, at his house in *Threadneedle-street*, in the city of *London*, who promised this deponent, that he would deliver the same to his said master, which said Mr. *H.* (as this deponent has been credibly informed and verily believes) is the person made use of by the said defendant *C. D.* in managing his business as his solicitor or attorney at law, and is now actually suing the plaintiff on a note given by him to the said defendant *C. D.* at common

H 2

law,

law, in the name of the other defendant *W. K.* against which the said plaintiff is now seeking relief in this honorable court. And this deponent further saith, That on the same day, he this deponent left the body of the said *subpœna* under the seal as aforesaid, for the said defendant *C. D.* at his late dwelling house, and last place of settled residence, in *St. Martin's le Grand*, in the said city of *London* (as this deponent hath been also credibly informed), by delivering the same to a woman, who said she then lived in the said house, and acquainted her with the contents thereof, which said *subpœna* was for the said *C. D.* to appear in this honorable court, at the suit of the said plaintiff, and was returnable immediately.

Sworn, &c.

C. B.

Affidavit of Residence of Defendant to obtain Subpœna returnable immediately.

In Chancery.

Between { *R. H.* Plaintiff,
and
J. G. Defendant.

D. *D.* clerk to *R. K.* of *Castle Yard, Holborn*, in the county of *Middlesex*, Gentleman, maketh oath, That the defendant *J. G.* liveth in *Great George Street*, within the city of *Westminster*, or the suburbs of the city of *London*, in the county of *Middlesex*. And this deponent, this present day, enquired at the said defendant's house or lodgings in the said street, whether he the said defendant was in town or not; and this deponent was there informed by a servant in livery at the said defendant's house or lodgings, that he was then within, in his said house or lodgings.

Sworn, &c.

D. D.

N. B. If the defendant does not live in *London*, or the suburbs thereof, the place where, must be stated in the affidavit, and how many miles it is distant from *London*.

Affidavit

*Affidavit of Service of Subpœna from the Defendants,
or the Confession.*

In Chancery.

Between { R. R. Plaintiff,
and
S. T. Defendant.

R. R. of, &c. the complainant in this cause maketh oath, that on (*the time when*) at (*the place where*) he heard S. T. the defendant in this cause, own and confess to Mr. T. C. (*the person to whom he made such confession*) and that he the said defendant was served with a writ of *subpœna*, issuing out of, and under the seal of this honorable court, returnable (*the return of writ*) at the suit of this deponent.

Sworn, &c,

R. R.

*An Affidavit of a Defendant, his Clerk in Court, and
Solicitor, in order to enlarge Publication, the Com-
mission being returned.*

Between { A. B. Plaintiff,
and
C. D. Defendant,

THE defendant C. D. of — in the county of — and E. F. the defendant's solicitor in this cause, and G. H. the said defendant's clerk in court in this cause, severally make oath, and say; and first, the said defendant C. D. maketh oath, that the depositions taken in this cause, by virtue of a commission issued for that purpose out of and under seal of this honourable court, have not been seen, read, or heard read, by this deponent, nor hath this deponent been informed or acquainted with the purport or contents of the said depositions so taken, nor will this deponent, until publication shall be further enlarged, and pass by the order of this honourable court, in case such order can be obtained: And the said defendant further saith, that he hath several material witnesses to examine, as he is informed, and believes (*to wit* —). And the said E. F. and G. H. for themselves severally make oath, that the said depositions are returned,

and now remain in the custody of this deponent *G. H.* the said defendant's clerk in court; unopened and unpublished as these deponents severally believe: And further say, that they nor either of them, have not seen, read, or heard read, the said depositions, nor been informed of the contents thereof, nor will they, these deponents, or either of them, be informed of the contents thereof, until publication shall be further enlarged, and pass by the further order of this honourable court, in case such order can be obtained.

C. D.
E. F.
G. H.

All sworn the — day of —
1767, at the public office,
before

Affidavit of a Clerk in Court, in order to enlarge Publication, the Commission being returned.

Between { *C. D.* Complainant,
and
E. F. Defendant.

A. *B.* one of the sworn clerks of the six clerks' office, the said —'s clerk in court, maketh oath, that the depositions taken in this cause, by virtue of a commission issued for that purpose out of and under seal of this honourable court, are returned unto him this deponent, and the same remain unopened and unpublished; and this deponent saith, that he hath not seen nor read, nor is he acquainted with the purport or contents of the depositions so taken, nor will this deponent be informed thereof until publication shall pass by the further order of this honourable court, in case such order can be obtained.

Note; The plaintiff or defendant, and his solicitor, must make the like affidavit with the clerk in court, where publication is actually passed and witnesses examined, before any order can be obtained to enlarge publication.

*Affidavit of a Solicitor in order to enlarge Publication
the Commission being returned.*

Between { *A. B. Plaintiff,*
 and
 C. D. Defendant.

A. B. of, &c. maketh oath, that he hath not seen, heard, read, or been informed of the purport or contents of any of the depositions taken in this cause, nor will he, this deponent, see, hear, read, or be informed of, the purport or contents of the said depositions, until the further order of this honourable court, in case such order can be obtained for the said defendant to examine any witnesses.

Note; This affidavit is used where the clerk in court has made an affidavit as before; but then the plaintiff or defendant, at whose request publication is enlarged, must make the like affidavit; and if all three are in or near *London*, they usually join in one affidavit.

Note; An affidavit of service of a *subpœna* to hear judgment, may be in the same form as where a *subpœna* to appear.

Affidavit of serving a Notice of Motion.

Between { *A. B. Complainant,*
 and
 C. D. Defendant.

G. H. of, &c. maketh oath, that he this deponent did, on the — day of — serve Mr. *E.* who acts as clerk in court for the defendant in this cause, (as this deponent is informed and believes), with a notice in writing in this cause, purporting that the plaintiff intended to move the court, &c. (*here recite the notice*) by delivering a copy of the said notice to the said Mr. *E.*'s clerk or agent, at his seat in the six clerk's office.

G. H.

Sworn, &c.

*Affidavit of a Mortgagee's attending to receive his Money
pursuant to the Master's Report.*

Between { A. B. Plaintiff,
 and
 C. D. Defendant.

A. B. the plaintiff in this cause, maketh oath, and saith, that he this deponent, in pursuance of the report of S. Y. esq; one of the Masters of this honourable court, bearing date the — day of — did on the — day of — personally attend and wait at the chapel of the Rolls in *Chancery Lane* from before the hour of ten of the clock until and after the hour of twelve of the clock (the time and place mentioned in the report) in the forenoon of the said — day of — in order to receive from the defendant in this cause the sum of 544*l.* 7*s.* by the said report reported due and directed to be paid to this deponent for principal, interest, and costs for the mortgage in question in this cause, when and where the said defendant (if more than one "the " said defendants, any or either of them") or any other person or persons, on his, their, (any or either of their) account or accounts, did not, to this deponent's knowledge or belief, attend or pay to this deponent the said sum of 544*l.* 7*s.* or any part thereof; but this deponent saith, that the said sum still remains due and unsatisfied.

A. B.

Sworn, &c.

Affidavit of serving a Petition.

Between { A. B. Plaintiff,
 and
 C. D. Defendant.

A. B. of, &c. — maketh oath, that he this deponent did, on the — day of — instant [*if upon the party himself, then you say, " personally serve the (party) with a true copy, &c."*] leave at the seat of Mr. — of the six clerks' office, with his agent there, a true copy of a petition in this cause in writing, preferred to the right honourable the Master of the Rolls, on the humble petition of the said defendant, with his Honor's answer, or order thereon, bearing date the — instant, whereby it was ordered that the parties concerned

concerned should attend his Honor on the matter of the said petition the next day of petitions, of which notice was forthwith to be given; which said Mr. ——— acts as clerk in court for the plaintiff in this cause, as this deponent is credibly informed, and verily believes: And this deponent further saith, that at the time he so served the said copy he shewed the said original petition to the said agent.

A. B.

Sworn, &c.

Affidavit of serving an Order on a Clerk in Court.

Between { A. B. Complainant,
and
C. D. Defendant.

G. H. of, &c. maketh oath, that he this deponent, did, on the — day of — personally serve Mr. — with a true copy of an order made in this cause, bearing date, &c. whereby it was ordered, that, &c. (*here set forth the ordering part*) or to that effect; and this deponent did at the same time shew unto the said Mr. — the original order duly passed and entered; which said Mr. — is clerk in court for — in this cause, as this deponent is informed and believes.

G. H.

Sworn, &c.

Affidavit of serving an Order to confirm the Master's Report, unless Cause.

Between { A. B. Plaintiff,
and
C. D. Defendant.

G. H. of, &c. maketh oath, that he this deponent did, on the — day of — personally serve the defendant C. D. with an order made in this cause, bearing date the — day of — whereby it was ordered that the report made in this cause by Mr. B. one of the Masters of this court, dated the — day of — and all the matters and things therein contained, should stand ratified and confirmed by the order, authority, and decree of this honourable court,

to be observed and performed by all parties thereto, according to the tenor and true meaning thereof, unless the defendant having notice thereof, should within eight days after such notice shew, unto this court, good cause to the contrary, and at the same time shewing the said *C. D.* the said original order duly passed and entered.

G. H.

Sworn, &c.

Affidavit of serving an Order on two Clerks in Court.

Between { *C. D.* Complainant,
and
E. F. Defendant.

A. B. of, &c. — maketh oath, that he this deponent did, on the — day of — last, leave at the seat of Mr. — of the six clerks office, with his agent there, a true copy of an order in writing in this cause, duly passed and entered, bearing date the — day of the said — whereby it was ordered, that, &c. — And this deponent further saith, that he did on the same day also leave at Mr. —'s seat, with his clerk or agent there, another copy of the said order in writing, purporting as aforesaid; which said Mr. — is clerk in court for the, &c. and the said Mr. — for the — as this deponent is credibly informed and verily believes: And this deponent at the same time shewed each of the said respective agents, he so served as aforesaid, the said original order.

Affidavit of serving an Injunction.

Between { *A. B.* Complainant,
and
C. D. Defendant.

G. H. of, &c. maketh oath, that he this deponent did, on the — day of — personally serve the defendant in this cause with a true copy of an *injunction* in this cause issued out and under the seal of this honourable court, bearing *teste* the — day of — instant [*or now last past*]; and this deponent did at the same time shew unto the said defendant the original writ of *injunction* under seal of this honourable court,

court, whereby the said defendant was enjoined, &c. [*here set forth the injoining part of the injunction, concluding with these words, or to that effect.*]

G. H.

Sworn, &c.

Petition for further Time after Defendant has entered his Appearance with the Register.

To the Right, &c.

SHEWETH,

THAT your Honor on the —— day of —— last, was pleased, on your petitioner's entering his appearance with the Register on an attachment, to grant him a commission to take his answer returnable without delay, and to give him time to the last week in the last term to return the same, and to stay all proceedings for want thereof in the mean time.

That your petitioner appeared with the Register, and issued out a commission accordingly, and hath taken his said answer; but his habitation being in —— the same is not returned.

Your petitioner therefore humbly prays your Honor to give him ten days time to return his said answer, and to stay all proceedings for want thereof in the mean time.

And, &c.

Petition to set down a Cause for hearing on the Equity reserved.

To the Right Honourable, &c.

A. B. Plaintiff,
C. D. Defendant.

The humble Petition of the Plaintiff,

SHEWETH,

THAT at the hearing of this cause before your Lordship, on, &c. last, your Lordship was pleased to order an issue at law to be tried, whether, &c. That the issue hath

hath since been tried at law, according to the directions of the said order; and the defendant in this cause, who was plaintiff in the said action, became nonsuit upon full evidence.

Your petitioner therefore humbly prays your Lordship to appoint a short day for setting down this cause on the equity reserved, and that your petitioner may have leave to move for his costs at law, and of his suit at the said hearing.

And, &c.

Petition for a Re-hearing the Cause.

To the Right Honorable, &c.

A. B. Plaintiff,
C. D. Defendant.

The humble Petition of the Defendant,

SHEWETH,

THAT your petitioner finds himself much aggrieved by a decretal order made in this cause, the day, &c. by, &c. whereby your petitioner is ordered and decreed to pay unto the plaintiff the sum of 500*l.* by, &c. next, with interest for the same, from the time of the said hearing until the money be paid; which sum of 500*l.* or the greatest part thereof, having been long since paid, and proof thereof made, as your petitioner conceives, and is advised.

Your petitioner humbly prays, that your Lordship will be pleased to vouchsafe a rehearing in this cause before your Lordship, he submitting to pay what costs the Court shall award, in case his complaint be found groundless.

And, &c.

Petition to examine a Witness de bene esse before Issue joined.

Between { *A. B. Plaintiff,*
 and
 C. D. Defendant.

To the Right Honourable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner having filed his bill in this honourable court against the said defendant whereto he hath appeared; but the said defendant living a great distance from *London* in the country, he hath obtained time to put in his answer till the first day of next *Hilary* term.

That one *G. H.* of, &c. Gentleman, a very material witness for your petitioner in this cause; and without the benefit of whose evidence, your petitioner (as he is advised) cannot safely proceed to a hearing of this cause; and the said *G. H.* being seventy years of age or upwards, and very weak and infirm, so that in all probability he may not live till your petitioner can bring his cause to an issue, as by the affidavit annexed appears.

Your petitioner therefore most humbly prays your Honour that he may be at liberty forthwith to examine the said *G. H. de bene esse*, as a witness for your petitioner in this cause, saving all just exceptions.

And your petitioner shall ever pray, &c.

Petition for a special Commission, and for Commissioners' Names, or in Default, the Commission to issue ex parte.

Between { *A. B. Plaintiff,*
 and
 C. D. Defendant.

To the Right Honourable, &c.

The humble Petition of the Defendant,

SHEWETH,

THAT on the — day of — last, the plaintiff exhibited his bill in this honourable court against your petitioner, who has appeared thereto, and taken a copy.

That your petitioner's clerk in court has oftentimes applied to the plaintiff's clerk for commissioners' names for taking your petitioner's answer, who refuses to give names for that purpose.

That your petitioner resides in the county of — and is advised to plead, answer, and demur to the said bill.

Your petitioner therefore must humbly pray your Honor that he may be at liberty to take out a commission to plead, answer, and demur to the plaintiff's bill; and that the plaintiff's clerk in court may in two days after notice hereof give commissioners' names to the petitioner's clerk in court, to take your petitioner's plea, answer, and demurrer, or in default thereof, that your petitioner may be at liberty to take out the said commission directed to his own commissioners.

And your petitioner, &c.

Petition for a Commission to assign a Guardian, and to take the Infant's Answer by such Guardian.

Between { *A. B. and another, Plaintiff,*
 and
 C. D. - - Defendant.

To the Right Honourable, &c.

The humble Petition of the Defendant;

SHEWETH,

THAT the plaintiffs exhibited their bill in this honourable court against your petitioner, to which he has appeared and taken an office copy.

That your petitioner residing in the county of — has craved a commission to take his answer; and the plaintiffs have given commissioners' names for that purpose.

But forasmuch as your petitioner is an infant, and cannot answer the plaintiff's bill, nor defend this suit without having a guardian assigned for that purpose.

Your petitioner therefore humbly prays your Honor that he may be at liberty to sue out a commission to assign him a guardian, and to take his answer by such guardian.

And your petitioner shall ever pray, &c.

Petition to take an Answer de Novo, and to amend the Caption, and stay Process.

Between { *A. B. Plaintiff,*
 and
 C. D. Defendant.

To the Right Honourable, &c.

The humble Petition of the Defendant.

SHEWETH,

THAT in Hilary Term last the plaintiff filed his bill in this honorable court against your petitioner, and a commission issued to take your petitioner's answer, by virtue whereof

whereof it was taken, returned and filed ; but on looking into the same there appeared to be a mistake in the caption, whereupon the plaintiff obtained an order to suppress the said answer, it not appearing by the said caption that your petitioner was ever sworn to the truth of the said answer.

That in regard this is in your petitioner's own delay, who is desirous that this mistake should be rectified, and is ready and willing to pay the plaintiff his costs out of purse touching the said order.

Your petitioner therefore most humbly prays your Honor, that he may be at liberty to sue out another commission directed to the former commissioners to take his said answer *de novo*, and that the caption thereof may be rectified or amended ; and that your petitioner may have three weeks time to return the same, and that all further proceedings for want thereof be in the mean time stayed.

And your petitioner shall ever pray, &c.

A common Petition to receive Exceptions.

Between { *A. B. Plaintiff,*
 { *C. D. Defendant.*

To the Right Honorable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner having exhibited his bill in this honorable court against the defendant, who hath put in his answer thereto, and your petitioner being advised that the said answer is insufficient in several material points, hath caused exceptions to be taken thereto. But the said exceptions not coming in by the time limited by the rules of this court, the defendant's clerk in court refuses to accept the same.

Your petitioner therefore most humbly prays your Honor, that the said defendant's clerk in court may receive the said exceptions.

And your petitioner shall ever pray, &c.

Exceptions cannot be ordered to be received as in due time after three terms from the putting in of the answer, without special reasons.

Another

Another Petition to receive Exceptions.

Between *A. B.* - - - Plaintiff,
C. D. and others, Defendants.

To the Right Honourable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner having exhibited his bill in this honorable court against the said defendant and others, the said defendant put in his plea and answer; on arguing of which plea on the ---- day of ---- last, it was ordered that the same should stand for an answer, with liberty to your petitioner to except such matters as in the said order are mentioned.

That your petitioner has many material exceptions to offer in pursuance of the said order, but the drawing up and entering of the said order, and preparing the said exceptions, which are long, having already run out more than the time of course for delivering exceptions, the defendant's clerk in court refuses to accept the same.

Your petitioner therefore most humbly prays your Honor, that the said defendant's clerk in court may now receive your petitioner's exceptions.

And your petitioner shall ever pray, &c.

A common Petition to refer Exceptions.

Between { *A. B.* Plaintiff,
 and
 C. D. Defendant.

To the Right Honourable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner having filed exceptions to the defendant's answer, and the time for submitting being expired:

I

Your

Your petitioner therefore most humbly prays your Honor, that it may be referred to one of the Masters of this court, to certify whether the said defendant's answer be sufficient in the points excepted to, or not.

And your petitioner shall ever pray, &c.

Another Petition to refer Exceptions.

Between { A. B. Plaintiff,
and
C. D. Defendant.

To the Right Hon. &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner having exhibited his bill in this honorable court against the said defendant, he appeared and put in his plea and answer thereto; on arguing of which plea, on the day of last, the same was ordered to stand for an answer, with liberty to your petitioner to except to such matters as in the said order are mentioned.

That your petitioner obtained your Honor's order of the day of last, that the defendant's clerk in court should receive exceptions as in due time, and accordingly your petitioner soon after delivered exceptions to the defendant's clerk in court; but the said defendant hath not submitted to put in a further answer, although his time for so doing is expired by the rules of this court.

Your petitioner therefore most humbly prays your Honor, that it may be referred to one of the Masters of this court to look into your petitioner's bill, the defendant's plea and answer, and your petitioner's exceptions, and certify wherein the said plea and answer is insufficient.

And your petitioner shall ever pray, &c.

Petition to renew a Sequestration.

Between *A. B.* Plaintiff,
C. D. Defendant.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble Petition of the Plaintiff,

SHEWETH,

THAT the defendant having refused to answer your petitioner's bill, all process of contempt to a sequestration hath been sued out against him, and a commission of sequestration hath been sued out, executed and returned; but your petitioner hath since discovered, that not above one third part of the said defendant's estate is sequestered, and that the said commission was committed to the hands of a person therein named, who neglected to sequester the said estate.

Your petitioner therefore most humbly prays your Lordship, that he may be at liberty to take out a new commission of sequestration to sequester the said defendant's estate, directed to new commissioners.

And your petitioner shall ever pray, &c.

Petition to withdraw a Replication and amend a Bill, upon Payment of Twenty Shillings Costs to such Defendants as have answered.

Between *A. B.* - - - Plaintiff,
C. D. and others, Defendants.

To the Right Honorable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT some time since your petitioner filed his bill in this honorable court against the said defendants, to which they appeared and answered, and your petitioner replied, but no witnesses have been yet examined in the said cause.

That your petitioner is since advised to amend his said bill, by adding *R. B.* a defendant with proper charges; and forasmuch as this is in your petitioner's own delay;

Your petitioner most humbly prays your Honor, that he may have leave to withdraw his replication, and amend this bill, as he shall be advised; on amending the copies of the said bill of such of the defendants who have answered the same, your petitioner not requiring any answer to such amended bill from the said defendants who have already answered.

And your petitioner shall ever pray, &c.

Petition for Subpœnas to rejoin, and that Service on the Clerk in Court may be good, and to join and strike Commissioners' Names.

Between *A. B.* - - - Plaintiff,
C. D. and others, Defendants.

To the Right Honorable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner filed his bill in this court against the said defendants, who have appeared thereto and put in their answers, to which your petitioner hath replied, and is desirous to speed his cause.

Your petitioner therefore humbly prays your Honor, that he may be at liberty to take out *Subpœnas* to rejoin, returnable immediately, and that service thereof on the defendants' clerks in court may be deemed good service on the defendants; and that your petitioner may be at liberty to sue out a commission for examination of his witnesses, returnable without delay; and that the defendants' clerks in court do, in four days after notice hereof, join and strike commissioners' names with your petitioner's clerk in court, or, in default thereof, that your petitioner may have a commission directed to his own commissioners.

And your petitioner shall ever pray, &c.

Note, To the prayer of this petition may be added, And that your Petitioner may be at liberty to examine in Term-time.

Petition to join and strike Commissioners' Names, or in Default, to issue a Commission ex Parte.

Between *A. B.* Plaintiff,
C. D. Defendant.

To the Right Honorable, &c.

The humble Petition of the Defendant,

SHEWETH,

THAT on the day of last, your petitioner was served with an order obtained upon the plaintiff's petition of the day of for a *subpoena* to rejoin, returnable immediately, and that service thereof on your petitioner's clerk in court should be good service, and that the petitioner's clerk in court should in four days after notice join and strike commissioners' names with the plaintiff's clerk in court, or that in default thereof the plaintiff might sue out a commission directed to his own commissioners.

That your petitioner, upon receiving the same, was ready to comply with the terms therein mentioned, and accordingly applied to the plaintiff's clerk in court, to join and strike commissioners' names with him, who informed your petitioner's clerk in court, that he had not names, and put him off with trifling excuses.

That your petitioner has very good reason to believe that such excuses were made merely for delay; and in regard your petitioner hath several material witnesses, as he is advised, to examine, and is desirous the cause should be speeded;

Your petitioner most humbly prays your Honor, that the plaintiff's clerk in court may in four days after notice join and strike commissioners' names with your petitioner's clerk in court; or that in default thereof, your petitioner may sue out a commission for examination of witnesses, directed to his own commissioners.

And your petitioner shall ever pray, &c.

*Petition to alter a Commissioner's Name in a Commission,
and for Liberty to renew the same, and for Time to
return it.*

Between *A. B.* Plaintiff,
C. D. Defendant.

To the Right Honorable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner last *Easter* vacation took out a commission to examine witnesses, wherein the defendant joined, but your petitioner was not able to execute the same during that vacation.

That your petitioner is in hopes of doing the same this vacation; but one of the commissioners, (to wit) *T. B.* Esq; is engaged to be in *London*; whereupon your petitioner hath named the persons subscribed in his room, but the defendant refuses to strike the said names in hopes of delaying your petitioner, and that the vacation may be lost.

Your petitioner therefore most humbly prays your Honor, that he may be at liberty to alter the commission, and that your Honor will be pleased to appoint which of the two persons subscribed shall stand in his room, and that your petitioner may be at liberty to renew the said commission, and to make the same returnable without delay.

And your petitioner shall ever pray, &c.

Petition to examine a Defendant.

Between *A. B.* - - - Plaintiff,
C. D. and *E. F.* Defendants.

To the Right Honorable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT issue being joined in this cause, your petitioner is advised that the said defendant *E. F.* is a very material witness for your petitioner; and forasmuch as he is no way concerned in point of interest,

Your

Your petitioner therefore most humbly prays your Honor, that he may be at liberty to examine the said defendant *E. F.* at the examination of witnesses in this cause, as a witness for your petitioner, saving just exceptions.

And your petitioner shall ever pray, &c.

Petition to add an Interrogatory or two, but not to examine any Witness already examined.

Between *A. B.* Plaintiff,
C. D. Defendant.

To the Right Honorable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner obtained an order for a commission to examine witnesses returnable -----, and accordingly examined several witnesses, and returned his commission; but before publication passed, the defendant obtained an order for a commission to examine witnesses this vacation; and your petitioner has joined and struck commissioners' names for that purpose; but no notice is yet given of executing the said commission.

That your petitioner is advised it is necessary to add an interrogatory or two to his former set of interrogatories.

Your petitioner therefore humbly prays your Honor that he may be at liberty to add an interrogatory or two to his former set of interrogatories, but so as not to examine any witness that hath already been examined.

And your petitioner shall ever pray, &c.

Petition to enlarge Publication.

Between *A. B.* Complainant.
C. D. Defendant.

To the Right Honorable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT on the instant a rule was entered by the defendant's clerk in court for passing publication in this cause; which rule is not yet expired.

That your petitioner has not yet been able to examine any witnesses, though he has several material witnesses (as he is advised) to examine in this cause, without whose testimony he cannot safely proceed to a hearing.

Your petitioner therefore most humbly prays your Honor, that publication in this cause may be enlarged till the first day of the next term.

And your petitioner shall ever pray, &c.

Petition to enlarge Publication.

Between { *A. B.* Plaintiff.
 and
 { *C. D.* Defendant.

To the Right Honorable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT a commission has been executed in this cause, and is returnable, since which the plaintiff hath given a rule to publish, but the same is not yet expired; and forasmuch as your petitioner hath several material witnesses to examine in this cause who live in and about the city of London;

Your petitioner therefore most humbly prays your Honor, that publication in this cause may be enlarged for a fortnight,

And your petitioner shall ever pray, &c.

Petition to enlarge Publication.

Between { A. B. Plaintiff,
and
C. D. Defendant.

To the Right Honorable, &c.

The humble Petition of the Defendant,

SHEWETH,

THAT this cause being at issue, several witnesses have been examined on the part of the plaintiff; and this day being the day of , a rule is entered by the plaintiff's clerk in court, for passing publication in this cause.

That by reason of your petitioner's and his solicitor's illness, your petitioner has not been able to examine his witnesses this vacation, although he hath several very material witnesses (as he is advised) to examine; and in regard your petitioner hath no intention to postpone the setting down this cause for hearing,

Your petitioner therefore most humbly prays your Honor, that publication in this cause may be enlarged for a month.

And your petitioner shall ever pray, &c.

Petition to enlarge Publication, so as not to hinder setting down the Cause, and for an original and cross Cause to come on together,

Between A. B. Plaintiff,
C. D. Defendant,
And the said C. D. Plaintiff,
And the said A. B. Defendant,

To the Right Honourable, &c.

The humble Petition of, &c.

SHEWETH,

THAT these causes being at issue, commissions were taken out and executed, and witnesses examined thereupon in the last long vacation,

That

That your petitioner (the plaintiff in the original cause) the twenty-first instant caused a rule to be given for passing publication in the original cause, but having several material witnesses (as he is advised) still to examine, and your petitioners having consented and agreed to the several matters contained in the prayer of this petition, your petitioners' clerks in court having subscribed their names testifying such consent,

Your petitioners therefore most humbly pray your Honor, that publication may be enlarged in the original cause until the first general seal after this term, and that publication may then pass in both causes, but not so as to hinder the plaintiff in the original cause from setting down the same for hearing this term; and that the plaintiff in the cross cause may be at liberty to set down his cause to be heard at the same time.

And your petitioners shall ever pray, &c.

Petition to enlarge Publication, and for a Commission to examine, &c.

Between { *A. B. Plaintiff,*
 and
 C. D. Defendant.

To the Right Honorable, &c.

The humble Petition of the Defendant,

SHEWETH,

THAT the plaintiff has given rules to produce witnesses, and to pass publication as of the last Term, but has not examined any witnesses.

That your petitioner hath several very material witnesses (as he is advised) to examine in this cause, without whose testimony he cannot safely proceed to a hearing; and forasmuch as your petitioner lives in, &c.

Your petitioner therefore most humbly prays your Honor, that publication in this cause may be enlarged until the first day of the next term, and that your petitioner may have a commission for examination of witnesses, and that the plaintiff's clerk in court may join

join and strike commissioners' names with your petitioner's clerk in court, in four days after notice to the plaintiff's clerk in court, or that, in default thereof, your petitioner may be at liberty to take out a commission this vacation, directed to his own commissioners.

And, &c.

Petition to serve a Subpœna to hear Judgment on a Clerk in Court, Defendant absconding.

Between *A. B.* — — Plaintiff,
C. D. and others, Defendants.

To the Right Honorable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner's cause being set down to be heard on — day of — next ensuing, and *subpœnas* to hear judgment have been issued and served on all the defendants, except the defendant *C. D.* and the said defendant *C. D.* absconding and concealing himself, so that your petitioner is not able to serve him with a *subpœna* to hear judgment in this cause, as by the affidavit annexed appears;

Your petitioner therefore most humbly prays your Honor, that service of the said *subpœna* to hear judgment on the said defendant *C. D.*'s clerk in court may be deemed good service on the said defendant.

And your petitioner shall ever pray, &c.

Petition to prove an Exhibit viva voce at the Hearing.

Between *A. B.* Plaintiff,
C. D. Defendant,

To the Right, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT this cause being set down to be heard before your Honor, your petitioner is advised it will be necessary for him

him to prove, at the hearing thereof, a certain bond bearing date the. — day of —, entered into by the said defendant to your petitioner in the penalty of 100*l.* conditioned for the payment of 500*l.* and interest.

Your petitioner therefore most humbly prays your Honor, that he may be at liberty, at the hearing of this cause, to examine one or more witness or witnesses *viva voce* to prove the said bond.

And your petitioner shall ever pray, &c.

Petition that an Answer taken in one Cause may be read, and made use of at the Hearing of another Cause.

Between { *A. B. Plaintiff,*
 and
 C. D. Defendant.

To the Right Honorable, &c.

The humble Petition of the Defendant,

SHEWETH,

THAT your petitioner having exhibited his bill in this honorable court against the now plaintiff, for a discovery of their right and title to the several premises in question in this cause, to which the now plaintiff put in his answer;

Your petitioner therefore most humbly prays your Honor, that he may be at liberty to read and make use of the now plaintiff's answer put into your petitioner's said bill at the hearing of this cause.

And your petitioner, &c.

Petition

*Petition that Depositions taken in one Cause may be read,
and made use of at the Hearing of another Cause.*

Between { A. B. Plaintiff,
and
C. D. Defendant.

To the Right Honorable, &c.

The humble Petition of the Defendant,

SHEWETH,

THAT one Mr. H. I. a mortgagee of the premises in question in this cause, having some time heretofore exhibited his bill to foreclose in this honorable court against your petitioner and the now plaintiff, and issue being thereupon joined, several witnesses were examined in the said cause.

Your petitioner therefore most humbly prays your Honor, that he may be at liberty, at the hearing of this cause, to read and make use of the depositions taken in the said cause, saving all just exceptions.

And your petitioner shall ever pray, &c.

Petition for Leave to examine Witnesses after Publication, upon the usual Affidavit.

Between { A. B. Plaintiff,
and
C. D. Defendant.

To the Right Honorable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT publication in this cause is passed, and the cause is set down for hearing before your Honor, but your petitioner having several material witnesses to examine, without whose evidence he cannot safely proceed to a hearing, and
your

your petitioner, his clerk in court, and solicitor, having not seen or inspected the depositions taken in this cause, or otherwise published or caused to be published the same, as by the affidavit annexed appears;

Your petitioner therefore most humbly prays your Honor, that publication in this cause may be enlarged for a fortnight, and the cause adjourned for that time.

And your petitioner shall ever pray, &c.

Petition to set down a Cause for re-hearing on Defendant's having made Default, and not appearing at the Hearing.

SHEWETH,

THAT this cause came on to be heard the — day of — last, and your petitioner not attending, your Honor made the usual decree; and your petitioner being willing to pay to the plaintiff the costs of that day's attendance, whenever the plaintiff's clerk in court shall think fit to deliver your petitioner a bill of the same;

Your petitioner therefore most humbly prays your Honor to appoint some short day for the hearing of this cause as to your petitioner.

And your petitioner shall ever pray, &c.

Petition to set down a Plea to be argued.

Between *A. B.* — — Plaintiff,
C. D. and others, Defendants.

To the Right Honorable the Lord High Chancellor of Great-Britain.

The humble Petition of the Defendant C. D.

SHEWETH,

THAT in — term last the plaintiff filed his bill in this honourable court against your petitioner and others, since which he has thought fit to amend the same.

That

That in — your petitioner put in his plea and answer to the said amended bill, which plea the plaintiff hath not yet set down to be argued.

Your petitioner therefore humbly prays your Lordship that he may be at liberty to set down his plea to be argued; and that your Lordship would be pleased to appoint a day for the arguing thereof.

And your petitioner shall ever pray, &c.

Petition to set down Exceptions to a Master's Report.

Between { A. B. Plaintiff,
and
C. D. Defendant.

To, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT your petitioner hath lately filed exceptions to the report of Mr. K. one of the Masters of this court made in this cause, bearing date the — day of — last past, and deposited 5*l.* as by the Register's certificate hereunto annexed appears.

Your petitioner therefore most humbly prays your Lordship to appoint a short day for the arguing of the said exceptions.

And your petitioner shall ever pray, &c.

Petition to set down a Cause for Hearing.

Between { A. B. Plaintiff,
and
C. D. Defendant.

To the Right Honorable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT publication is by order, bearing date the — day of — to pass in this cause the first day of next term; and your petitioner by the same order is to procure the said cause to be set down to be heard some time within the said term.

Your petitioner therefore humbly prays your Honor that this cause may be set down in the paper of causes for the last day of causes within the next term.

And your petitioner shall ever pray, &c.

Petition to appoint a short Day for a further Hearing on a Master's Report.

Between { A. B. Plaintiff,
and
C. D. Defendant.

To the Right Honorable, &c.

The humble Petition of the Defendant,

SHEWETH,

THAT on the hearing of this cause on the — day of — 1767, it was ordered and decreed (as in the decree), and after the said Master should have made his report, such further order should be made therein as should be just.

That in pursuance thereof the said Master hath made his report bearing date the — day of — last past in relation thereto.

Your petitioner therefore most humbly prays your Lordship to appoint a short day for the hearing of this cause on the said Master's report.

And your petitioner shall ever pray, &c.

Petition that Service of an Order Nisi on the Clerks in Court, may be good Service.

Between A. B. - - - - - Plaintiff,
C. D. E. F. and G. H. Defendants.

To the Right Honorable, &c.

The humble Petition of the Plaintiff,

SHEWETH,

THAT by the decree made on the hearing of this cause the — day of — 1789, it was referred to Mr. H. one of the Masters of this court, to compute what was due to your petitioner for principal, interest, and costs, for the sum of five hundred pounds secured to your petitioner on the premises in question in this cause.

That the said Master, by his report dated the — day of — 1790, certified to be due to your petitioner (on his said security) the sum of seven hundred pounds for his principal, interest, and costs, and your petitioner having on the — day of — 1790, obtained an order of this court to confirm the said report, (unless cause), he has not been able to get the said order served upon the said several defendants, by reason the said defendants live at a great distance from each other in several counties of *England*, as by the affidavit annexed appears.

Your petitioner therefore most humbly prays your Honor that service of the said order on the several clerks in court (who are concerned for the said several defendants in this cause) may be deemed good service on the said several defendants.

And your petitioner shall ever pray, &c.

In Chancery,

Between $\left\{ \begin{array}{l} A. B. \text{ Plaintiff,} \\ \text{and} \\ C. D. \text{ and others Defendants.} \end{array} \right.$

THE plaintiff's charge against the defendant *C. D.* for the personal estate of the testator *F. G.* come to his hands.

		<i>l.</i>	<i>s.</i>	<i>d.</i>
1790.				
March 1 st .	Cash received of Mr. <i>John Davis</i> , a debt due to the testator	50	0	0
2 ^d .	The like of Mr. <i>Joseph Turner</i>	30	0	0
3 ^d .	Cash received of Mr. <i>James Jones</i> , interest on his bond for 200 <i>l.</i> up to the testator's death.	7	0	0

The charge is taken from defendant's examination.

In Chancery,

Between $\left\{ \begin{array}{l} A. B. \text{ Plaintiff,} \\ \text{and} \\ C. D. \text{ and others Defendants.} \end{array} \right.$

THE discharge of the defendant *C. D.* one of the executors of *F. G.* the testator, in the pleadings in this cause named to the plaintiff's charge against him for the personal estate of the said testator.

		<i>l.</i>	<i>s.</i>	<i>d.</i>
1790.				
March 5 th .	Paid Mr. <i>B.</i> the proctor, for the probate of the will, &c.	15	2	4
	Paid Mr. <i>A.</i> the undertaker his bill for the funeral expences	30	9	2

And so state all the payments from defendant's examination.

*Affidavit of producing all Deeds and Writings before
a Master.*

In Chancery,

Between { *A. B. Plaintiff,*
 and
 C. D. and others Defendants.

C *D. of, &c.* one of the defendants above named maketh oath, that he this deponent or any other person or persons for his use, to his knowledge or belief, or with his privity or consent have not, nor hath, nor ever had in his or their custody or power, any deeds, books of account, papers or writings whatsoever relating to the matters in question in this cause, other than and except the several deeds, books of account, papers and writings mentioned and contained in the schedule hereunto annexed.

Sworn, &c.

Proposal for a Receiver.

In Chancery,

Between { *A. B. and others Plaintiffs,*
 and
 C. D. and others Defendants.

THE plaintiffs propose *F. G. of Ware, in the county of Herts, gent.* to be the receiver of the estates in the pleading in this cause named.

And the said *F. G.* proposes *H. I. of Ware* aforesaid, gent. and *K. L. of the same place, gent.* to be his sureties.

Affidavit of the Sureties.

In Chancery,

Between { *A. B.* and others Plaintiffs,
and
C. D. and others Defendants.

H. I. of *Ware*, in the county of *Herts*, gent. and *K. L.* of the same place, gent. severally make oath and say, and first this deponent *H. I.* for himself, saith, that he is worth the sum of 3000*l.* (double the amount of the yearly rent of the estates) after all his debts are paid. And this deponent *K. L.* for himself saith, that he is worth the sum of 3000*l.* after all his debts are paid.

Sworn, &c.

Affidavit of a Receiver on passing his Accounts.

In Chancery,

Between { *A. B.* and others Plaintiffs,
and
C. D. and others Defendants.

F. G. of *Ware*, in the county of *Herts*, gent. the receiver of the rents and profits of the estates in question in this cause, maketh oath, that the foregoing account set forth in the 10th and 11th pages of this book doth contain according to the best of this deponent's knowledge and belief, a full and true account of all the rents and profits of the said estates for one year, ending at *Lady day* 1790, being from the foot of his former account and of the former rents returned by his said former account to be in arrear and unreceived at the time of the making up the same, which have been received by this deponent, or any other person by his order, or for his use, except such as may have been received since the time of making up his account for the said year, ending at *Lady-day* 1790, which are or will be brought into his subsequent account. And this deponent further saith, that the several sums of money mentioned in the said foregoing account (in the 12th and 13th pages of this book) to have been paid or allowed, were actually paid or allowed by this deponent for
or

or on account of the said estates, and for the several purposes in the 12th and 13th pages mentioned, according to the best of his knowledge and belief. And this deponent further saith, that he doth not know of any error or omission in the said foregoing accounts to the prejudice of any of the parties in the said cause.

Bond on giving Security for Costs when Plaintiff resides out of the Jurisdiction of the Court.

KNOW all men by these presents, That we *A. B.* of, &c. gent. and *C. D.* of, &c. gent. are held and firmly bound to *S. R.* and *W. M.* esquires, in the penal sum of 40*l.* of good and lawful money of *Great Britain*, for which payment to be well and faithfully made, we bind ourselves, and each of us, our, and each of our heirs, executors and administrators firmly by these presents, sealed with our seals, &c.

Whereas *M. M.* plaintiff, hath lately exhibited his bill of complaint in his majesty's high court of chancery against *P. P.* defendant, touching the matters therein contained. Now the condition of this obligation is such, that if the above bounden *A. B.* and *C. D.* or either of them, their, or either of their heirs, executors or administrators, do and shall well and truly pay, or cause to be paid all such costs as the said court shall think fit to award to the defendant on the hearing of the said cause or otherwise, then this obligation to be void, or else to remain in full force and virtue.

Sealed and delivered, &c.

Affidavit of a Mortgagor's attending to receive his Money reported due.

In Chancery,

Between { *A. B.* Plaintiff,
and
C. D. Defendant.

A. B. of, &c. the plaintiff in this cause maketh oath and saith, that he this deponent in pursuance of the report of *J. E.* Esq; one of the Masters of this honorable court, bearing date the — day of — did on the —

day of ——— personally attend, and wait at the chapel of the *Rolls* in *Chancery lane* from before the hour of ten of the clock until and after the hour of twelve of the clock in the forenoon of the said ——— day of ——— in order to receive from the defendant in this cause the sum of ——— £, by the said report reported due, and directed to be paid to this deponent, for principal, interest, and costs, for the mortgage in question in this cause when and where the said defendant or any other person or persons on his account, did not to this deponent's knowledge or belief, attend or pay to this deponent the said sum of ——— £. or any part thereof, but this deponent saith, that the said sum still remains due and unsatisfied.

Notice of dismissing a Bill for want of Prosecution.

In Chancery,

Between { A. B. Plaintiff,
and
C. D. Defendant.

Mr. B.

TAKE notice that this honorable court will be moved on *Saturday* next being the second General Seal before *Hilary* term, or so soon after as counsel can be heard, that the plaintiff's bill may be dismissed with costs for want of prosecution. Dated this ——— day of 1792.

A. B. Solicitor for the defendant.

Notice of Motion for an Injunction.

Between { A. B. Plaintiff,
and
C. D. Defendant.

TAKE notice that this honorable court will be moved on, &c. that the plaintiff may be at liberty within 10 days to pay into the Bank in the name and with the privity of

of the Accountant-General of this court in trust in this cause, the sum of ——— l. in the pleadings of this cause mentioned, and to deposit in such manner as the Court shall direct the two promissory notes of hand in the schedule to the said bill particularly set forth, for the sums of ——— l. and ——— l. respectively; and that upon his so doing an injunction may be awarded to restrain the said defendant C. D. from all further proceedings in the action already commenced by him against the plaintiff, and to restrain the said defendant from commencing any other action or actions against the said plaintiff, or proceeding against him at law in any other manner touching the matters in the said bill contained, or any of them. Dated this ——— day of ——— 1792.

E. F. Solicitor for the Plaintiff.

To Mr. B. clerk
in court for
the Defendant. }

Notice of Motion for a Receiver to pay Balance into the Bank.

THIS honorable court will be moved on, &c. that A. B. the receiver of the rents and profits of the estate at ——— in the county of ——— and late belonging to ——— in question in this cause, do in a fortnight pay into the Bank, with the privity of the Accountant-General in trust in this cause, the sum of ——— l. the balance reported due from the said ——— by the Master's report made in this cause on the ——— day of ——— instant, and that the same when so paid into the Bank may be laid out in the purchase of bank 3 per cent. annuities in the name and with the privity of the said Accountant-General in trust in this cause, subject to the further order of this court. Dated, &c.

E. F. Solicitor for the Plaintiff.

Notice of Motion that a Sum may be paid into the Bank &c. and that the Master may make a separate Report of the Debts and Legacies.

THIS honourable court will be moved on, &c. that the receiver may forthwith pay into the Bank the sum of — l. the balance in his hands, and that the same when paid in may be laid out in the purchase of bank 3 per cent. consolidated annuities, in the name and with the privity of the Accountant General of this honourable court; and that Mr. W. the Master, to whom this cause stands referred, may make a separate report of the debts of A. B. the testator which he owed at his death, and of the legacies given by his will dated the — day of — 1792, in the decree mentioned. Dated, &c.

E. F. Solicitor for the Plaintiff.

Notice of executing a Commission to examine Witnesses.

WHEREAS we have received a commission issuing out of his majesty's high court of Chancery, to us and — directed, for the examination of witnesses in a cause there depending, between A. B. plaintiff and C. D. defendant. These are to give you notice, that we shall begin to execute the said commission on behalf of the plaintiff, at the house of — known by the sign of the — situate in — in the county of — on — being the — day of — next, at the hour of — of the clock in the forenoon of the same day; when and where you and your commissioners concerned may be present, if you please. Given under our hands this — day of — in the year of our Lord 1792.

To Mr. C. D.

E. F.

G. H.

Summons for Witnesses.

BY virtue of his majesty's commission issued out of the high court of Chancery, to us and others directed, for examination of witnesses, in a case there depending between
A. B.

A. B. plaintiff, and *C. D.* defendant. These are therefore by virtue of the said commission to will and require you personally to be and appear before us, or any three or two of the said commissioners as shall execute the said commission, on the ——— day of ——— instant, at the house of ——— known by the sign of ——— in ——— in the county of ——— to answer to such interrogatories as shall be administered unto you on the part of the said plaintiff. And this you are not to fail, as you will answer the contrary at your peril. Given under our hands, &c.

E. F.

To *G. W.*

G. H.

In order to proceed on the commission, plaintiff's solicitor gives notice thereof as above to the other party, 10 or 14 days before the time; likewise writes a sufficient number of tickets for his witnesses' attendance, which must be likewise signed by his commissioners, and served on each witness; the first notice may be served on the party himself, or left at his house with his wife or servant; but notice or summons should be served personally on each witness; and if such witness do not attend, the Court will order such witness to attend at his own expence, to be examined, and if he disobeys such order, then an attachment shall go against him; in the mean time the solicitor may write the title of the cause, and the introductory part of the depositions, and also get some skins of 2s. 6d. stamp parchment for ingrossing the depositions on, and provide a clerk to attend to ingross them as they are taken by the commissioners; which is likewise necessary for the defendant's solicitor to do.

The commissioners being met, the solicitor having the carriage of the commission, gives it to his commissioners, (tho' properly it should be given to them before they sign the notices and summonses), and they having fixed on a proper room, and interrogatories on each side being exhibited, they open the commission (which till then must remain sealed) to see their authority; then they administer the oath to each other, and also the oath to the clerks, which are annexed to the commission; the oaths being administered, the commissioners sign their names to each party's interrogatory at the bottom, and then call for a witness before them.

If a commissioner is to be examined as an evidence, he must be sworn and examined by the rest of the commissioners before he acts as a commissioner. *Vern.* 396. *Gilb. Hist. of Chan.* 138.

The

The solicitors in the mean time being attended by their witnesses in other places, send them to be examined as required, one by one; and to save time and trouble may send up a note to what particular interrogatory that witness can depose, tho' either party may cross-examine each other's witnesses on their whole set of interrogatories, or any of them as they think proper, or are instructed to do by the solicitor; the solicitors make it agreeable to themselves in the manner of sending up the witnesses, one on one side, then one on the other, &c. The solicitors and commissioners are allowed one guinea a day, and the clerks half a guinea a day during the commission, and all expences borne.

If notice be given, and at the day appointed the commission is opened, but nothing done, nor any adjournment made, the commission is determined, except the other side agree to adjourn, or to take new notice; but if the commission is not opened, and he who has the carriage of it, gives new notice, and then executes it, this is a sufficient execution, unless the other side in the mean time obtains and serves an order to stay the proceedings until the costs of the former attendance of his commissioners and witnesses are paid; for if, by default of him who has the carriage, nothing is done, he shall pay the charges the other side is put to, either for court fees, commissioners and witnesses' attendance, &c. to be ascertained by the oath of the party, or him who disbursed the money for him, and shall renew the commission at his own costs, and if renewed, the other side commonly has the carriage of it.

When an adjournment is made, it is usual to make a memorandum of it, and the commissioners to sign it.

The introductory Part of the Depositions.

DEPOSITIONS of witnesses produced, sworn and examined on the — day of — in the 34th year of the reign of his majesty king George the Third, and in the year of our Lord 1794, at the house of — known by the sign of the — situate in the parish of — in the county of — by virtue of a commission issuing out of his majesty's high court of Chancery to us *E. F. G. H. I. K.* and *L. M.* directed, for the examination of witnesses, in a cause there depending, between *A. B.* plaintiff and *C. D.* defendant, on the part and behalf of the plaintiff, we the

the said commissioners, and also the respective clerks by us employed for taking and ingrossing the said depositions, having first taken the oaths annexed to the said commission as thereby required.

The *depositions* being taken, engrossed, and carefully examined with the paper copies, the commissioners *make up the commission*, that is, they sign each schedule or skin of the examinations, and also the interrogatory, (if not signed before) and annex both to the commission, then upon the back of the commission, about the middle, they indorse the return thus:

The execution of this commission appears in a certain schedule (or schedules) to this commission annexed. E. F. G. H.

Subscribing their names thereto, then they fold it up together in such manner, that the label of the commission may hang out, or appear on the outside, and bind it round with tape, setting their seals in several meetings or crossings of the tape, and in some place their names to it; the paper draft they likewise roll up, bind together, and seal with several seals, which they then usually cut in two in the middle, and a commissioner of the plaintiff's takes one half, and a commissioner of the defendant's the other half of each party's draughts so cut; this done, one of the commissioners takes the commission to send or bring to town; if sent, he must personally deliver it to the person who brings it, for such person must swear,

That he received it from the hands of one or more of the commissioners therein named.

Notice of Motion for a Commission de bene esse after Appearance.

THE plaintiff intends to move this honorable court on, &c. that he may be at liberty to sue out a commission for the examination of ——— as a witness for him in this cause, *de bene esse*, and that the defendant's clerk in court may join and strike commissioners' names with the plaintiff's clerk in court, in four days after notice hereof, and may be at liberty to execute the same on ten days notice to the defendant; or in default thereof, that the plaintiff may be at liberty to sue out such commission, directed to his own commissioners.

Dated, &c.

Notice of Motion to vacate Receiver's Recognizance.

MR. —, the late receiver of the estates in question in this cause, intends to move this honorable court on, &c. That the recognizance entered into by him the said — and his sureties may be vacated, and that the plaintiff may pay unto him the said — the sum of — l. reported due to him by Mr. —'s report. Dated the day of , pursuant to an order made in this cause the day of .
Dated, &c.

Notice of Motion to rectify the Minutes of a Decree.

THIS honorable court will be moved on, &c. That the minutes of the decree made in this cause may be altered or varied, by inserting, after the words , the following words, viz. And that the said decree may be further altered or varied, by striking out the following words, viz. .
Dated, &c.

Notice of Motion for Purchaser to be at Liberty to pay in his Purchase-Money into the Bank, and to be let into Possession.

THIS honorable court will be moved on, &c. That *A. B.* who was the best purchaser of the estate comprised in Lot 1. mentioned in Mr. 's report, dated the day of , at the sum of l. may be at liberty to pay his purchase-money into the Bank, with the privity of the Accountant General of this honorable court, and that thereupon he may be let into possession, and receive the rents and profits from the day of last.
Dated, &c.

Motions of Course.

PLEASE to move to confirm Mr. *W.*'s report, dated the — day of —, (whereby *J. H.* is reported the best purchaser of the estate comprised in Lot 1. at *l.* —) unless cause and that service on the plaintiff and defendant's clerks in court may be good service.

PLEASE to move to confirm Mr. *W.*'s report, dated the — day of — (whereby *J. H.* is reported the best purchaser of the estate comprised in Lot 1. at *l.* —) absolutely on affidavit and certificate.

Petition for a Commission of Sewers.

To the Right Honorable Edward Lord Thurlow, Lord High Chancellor of Great-Britain, and the Lord Chief Justices of both Benches at Westminster.

The humble petition of several land-owners and occupiers of the Western parts of the county of —, and limits hereinafter mentioned, whose names are hereunto subscribed, for and on behalf of themselves, and the rest of the said land-owners and occupiers within said Western part,

SHEWETH,

THAT the last commission of sewers, for the said Western part and limits, and the borders and confines of the same, is now expired.

Your petitioners therefore most humbly pray your Lordships to grant a new commission of sewers, for the said Western part, limits, borders and confines of the same, directed to the persons named in the list hereunto annexed, or to such others as to your Lordships shall seem meet.

And your petitioners, &c.

*A. B.
C. D.
E. F.
G. H.
J. K.
L. M.*

N. B. *The statute of 23 Hen. 8. c. 5. ordains that the Lord Chancellor, Treasurer, the two Chief Justices for the time being, or any three of them, whereof the Lord Chancellor to be one, shall, as often as need be, direct commissions and appoint commissioners, in the form prescribed by the statute, to enquire by a jury of twelve men into the repairs of sea-banks and sea walls, and the cleansing of rivers, public streams, ditches, and other conduit, whereby any waters are carried off; but this jurisdiction is confined to such county or particular district as the commission shall expressly name.*

Petition for an Infant Mortgagee to convey, pursuant to stat. 7 Ann. c. 19.

To the Right Honorable the Master of the Rolls.

The humble Petition of G. H. of, &c.

SHEWETH,

THAT by indentures of lease and release, duly executed, bearing date, &c. made between your petitioner on the one part, and *A. B.* of, &c. gentleman, of the other part, your petitioner, for the consideration therein mentioned, did grant, release and confirm unto the said *A. B.* all that messuage, &c. to hold to the said *A. B.* his heirs and assigns for ever, redeemable by your petitioner, his heirs and assigns, on payment of the sum of 500 *l.* and interest at a day therein mentioned and since past.

That the said principal sum of 500 *l.* was not paid pursuant to the proviso of redemption in the said release mentioned, but the same is still due and owing, and the said *A. B.* is dead, having first made his will, and thereof appointed *C. D.* of ———— aforesaid, Esquire, sole executor, who hath duly proved the said will, and taken upon himself the execution thereof; and is thereby become intitled to receive the principal money and interest due on the said mortgage; but the said testator having left *E. F.* his grandson (an infant under the age of 21 years) his heir at law, the legal estate of and in the said mortgaged premises is now vested in the said infant.

That the said *C. D.* hath called upon your petitioner for payment of the principal and interest due on the said mortgage, and your petitioner is ready to pay the same on having a re-conveyance of the said mortgaged premises to him and his heirs, or to such other person or persons as he shall

shall direct. And your petitioner is advised that the said *E. F.* the infant in whom the legal estate of and in the said premises is now vested as aforesaid, is a trustee thereof within the intent and meaning of the statute made in the seventh year of the reign of her late Majesty Queen *Anne*, intituled, "An act to enable infants who are seised or possessed of estates in fee in trust, or by way of mortgage, to make conveyances of such estates."

Your petitioner therefore most humbly prays your Honor that it may be referred to one of the Masters of this honorable court to examine and certify how the said estate is vested in the said *E. F.* the grandson, and whether he is an infant and trustee, or mortgagee, within the intent and meaning of the said act of Parliament; and to whom the money due on the said mortgage ought to be paid.

And your petitioner shall ever pray, &c.

Conclusion of the State of the Case, to be left with the Master.

AND it is hereby humbly submitted that *E. F.* the infant, is a trustee or mortgagee within the intent and meaning of that act of Parliament, and as such may under the direction of the court join in a conveyance of the said estate.

Petition to confirm the Master's Report, and that the Infant may convey.

To the Right Honorable, &c.

The humble petition of, &c.

SHEWETH,

THAT by indentures of lease and release, &c. [State the facts as stated in the above petition.]

That by an order made by your Honor on the — day of —, 1792, it was ordered that it should be referred to Mr. —, one of the Masters of this court, to examine and certify, &c. [State the order.]

That, &c. [State the report.]

Your

Your petitioner therefore most humbly prays your Honor, That the said Master's said report may stand absolutely confirmed ; and that the said *E. F.*, the infant, may be directed, by the order of this honorable court, to release and convey the said premises herein, before and in the said indentures of lease and release comprised and mentioned, and all his estate, right, title, and interest in and to the same, unto and to the use of your petitioner, his heirs and assigns, or as he or they shall direct or appoint, upon full satisfaction and payment by your petitioner of all principal money and interest due, or to be due, on the said mortgage as aforesaid.

And your petitioner shall ever pray, &c.

C O S T S

OF THE

GENERAL PROCEEDINGS

IN

CHANCERY.

	Disbursement			Agent			Solicitor		
TAKING instructions for bill	l.	s.	d.	l.	s.	d.	l.	s.	d.
Drawing bill in Chancery per fo.	0	0	0	0	0	4	0	0	6
Ingrossing thereof per fo.	0	0	0	0	0	4	0	0	4
Parchment according to the size of the skin	0	0	0	0	0	0	0	0	0
Duty to each skin	0	2	0	0	2	0	0	2	0
Filing the same	0	5	4	0	5	4	0	5	4
Copy for counsel per sheet	0	0	0	0	0	2	0	0	2
To counsel to peruse and sign (or according to length)	1	1	0	1	1	0	1	1	0
Attending him	0	0	0	0	3	4	0	6	8
Close copy of bill per sheet	0	0	0	0	0	2	0	0	2
Filing bill	0	5	4	0	5	4	0	5	4
Fee for every three defendants to clerk in court	0	3	4	0	3	4	0	3	4
Ditto from four to six defendants	0	6	8	0	6	8	0	6	8
Subpœna to answer with two names	0	4	6	0	4	6	0	4	6
Ditto with three names	0	5	0	0	5	0	0	5	0
Drawing petition of defendants residing within 10 miles of London, in order to make subpœna returnable immediately	0	0	0	0	0	0	0	4	0

L

Paid

	Disbursement			Agent			Solicitor		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Paid at the Rolls answering the									
same - - -	- 0	5	6 0	5	6	0	5	6	
Drawing up order	- 0	4	6 0	4	6	0	4	6	
Entering ditto -	- 0	1	6 0	1	6	0	1	6	
Copy and service -	- 0	2	0 0	2	0	0	2	0	
Drawing and ingrossing affida- vit of a defendant's residing within ten miles of <i>London</i> , duty, and oath -	- 0	0	0 0	5	6	0	5	6	
Filing affidavit -	- 0	4	6 0	4	6	0	4	6	
Copy and service of subpoena on every defendant -	- 0	0	0 0	0	0	0	5	0	
If left at defendant's residence	0	0	0 0	0	0	0	2	6	
Drawing and ingrossing affida- vit of service of subpoena, stamp, and oath in the country	0	0	0 0	0	0	0	6	6	
Ditto in <i>London</i> -	- 0	0	0 0	5	0	0	5	0	
Filing affidavit per sheet	0	0	8 0	0	8	0	0	8	
Attachment of contempt	0	6	6 0	6	6	0	6	6	
Costs on ditto -	- 0	10	0 0	10	0	0	10	0	
If defendant be arrested	0	13	0 0	13	0	0	13	0	
Proclamation and distringas	0	6	6 0	6	6	0	6	6	
Costs on ditto -	- 1	1	0 1	1	0	1	1	0	
Writ of rebellion -	- 0	19	10 0	19	10	0	19	10	
Costs on ditto -	- 2	6	8 2	6	8	2	6	8	
Paid returning each	- 0	2	0 0	2	0	0	2	0	
Drawing affidavits of any length per fo. -	- 0	0	0 0	0	0	0	0	8	
Paid for returning each	0	2	0 0	2	0	0	2	0	
Distringas, debts, costs, and duty	0	7	2 0	7	2	0	7	2	
Entering appearance with registrar	0	0	0 0	3	4	0	3	4	
Dedimus to take answer	0	9	10 0	9	10	0	9	10	
Dedimus special to plead answer on demurrer -	- 0	0	0 0	0	0	0	12	8	
Taking instructions for answer	0	0	0 0	0	0	0	6	8	
Drawing answer per sheet	0	0	0 0	0	4	0	0	6	
Ingrossing per sheet	- 0	0	0 0	0	4	0	0	4	
Stamp for each skin	- 0	2	0 0	2	0	0	2	0	
Parchment according to length	0	0	0 0	0	0	0	0	0	
Copy of answer for counsel, per sheet -	- 0	0	0 0	0	2	0	0	4	
To counsel to peruse and sign	1	1	0 1	1	0	1	1	0	
Attending him -	- 0	0	0 0	3	4	0	6	8	
							Close		

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	Disbursement			Agent			Solicitor		
	l.	s.	d.	l.	s.	d.	l.	s.	d.
Close copy answer, per sheet	0	0	0	0	0	2	0	0	2
Drawing notice to take answer, copy and service	-	0	0	0	0	0	0	9	2
Commissioners to take answer each (but if obliged to go a journey more)	-	0	0	0	0	0	0	6	8
Certificate of answer come in	0	2	6	0	2	6	0	2	6
For a common injunction and stamps	-	0	0	0	0	0	1	3	2
For a special one	-	0	0	0	0	0	1	12	0
Office copy of bill and answer, per fo.	-	0	0	1	0	1	0	0	1
Fair copy of bill, per fo.	0	0	0	0	0	2	0	0	2
Commission to examine witnesses	0	15	10	0	15	10	0	15	10
Joining in commission, and at- tending striking commissioners	0	0	0	0	0	0	0	6	8
Subpoena <i>duces tecum</i>	-	0	0	0	0	0	0	8	6
Serving witnesses each	-	0	0	0	0	0	0	2	6
Drawing interrog. per fo.	0	0	0	0	0	0	0	0	8
Fair copy for counsel, per fo.	0	0	0	0	0	0	0	0	2
Paid counsel to settle and sign, or according to length	1	1	0	1	1	0	1	1	0
Attending him thereon	-	0	0	0	3	4	0	6	8
Each commissioner examining witnesses, per day	-	1	1	0	1	1	0	1	0
To each clerk ingrossing, ditto	0	10	6	0	10	6	0	10	6
Stamps and parchment (accord- ing to what used)	-	0	0	0	0	0	0	0	0
Examining each witness at exa- mining office, duty and oath	0	0	0	0	0	0	0	0	4
Solicitor attending each day	1	1	0	1	1	0	1	1	0
Copy and duty from office, per sheet	-	0	0	1	0	1	0	0	1
Every exhibit	-	0	2	6	0	2	6	0	2
Rule for publication	-	0	4	4	0	4	4	0	4
Setting down cause in paper	0	1	0	0	1	0	0		0
Setting down any cause at Lord Chancellor's	-	1	0	0	1	0	0	1	0
Setting down cause at the Rolls on six clerks certificate	1	0	0	1	0	0	1	0	0
Ditto on equity reserved	-	0	12	6	0	12	6	0	12
Ditto as costs	-	0	12	6	0	12	6	0	12
Ditto for further directions	0	12	6	0	12	6	0	12	6
	L 2								
				Ditto					

	Disbursement			Agent			Solicitor		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Office copy of Master's report, per fo. -	0	0	0	0	0	0	0	0	6
For attending and settling de- fendant's report	0	0	0	0	3	4	0	6	8
Subpœna to hear judgment	0	4	6	0	5	0	0	5	0
<i>Ne exeat regnum</i> -	0	15	4	0	15	4	0	15	4
<i>Habeas corpus</i> -	0	14	8	0	14	8	0	14	8
To counsel for every common motion -	0	10	6	0	10	6	0	10	6
For every notice of motion, copy, and service	0	0	0	0	1	0	0	2	0
Attending counsel and court on every motion -	0	0	0	0	3	4	0	6	8
Fees in court on assigning guardian for an infant at Rolls -	0	6	0	0	6	0	0	6	0
Ditto at Chancery	0	10	0	0	10	0	0	10	0
Fees on hearing petition at Rolls -	0	6	0	0	6	0	0	6	0
Ditto in court -	0	10	0	0	10	0	0	10	0
Drawing affidavit of service, copy, duty, and oath	0	0	0	0	0	0	0	5	6
Certificate of no cause shewn	0	1	6	0	1	6	0	1	6
Costs allowed on demurrer, if over-ruled -	0	0	0	0	0	0	5	0	0
Costs on excepting, if defend- ant submit to answer before making report -	1	10	0	1	10	0	1	10	0
After report in town -	2	0	0	2	0	0	2	0	0
If answer by commissioners	2	10	0	2	10	0	2	10	0
If second answer be insufficient, defendant pays	3	0	0	3	0	0	3	0	0
If third answer (and so on)	4	0	0	4	0	0	4	0	0
A receipt from a Master	0	2	6	0	2	6	0	2	6
Writ of execution of a decree, if long, per skin	0	0	0	0	0	0	1	6	8
Copy of ditto per skin	0	0	0	0	0	0	0	5	0
Exemplification of ditto per skin	0	0	0	0	0	0	1	6	8
———— per Master per skin for every three skins	0	0	0	0	0	0	0	6	8
Doggetting per skin -	0	0	0	0	0	0	0	2	0
Signing per Lord Chancellor	0	10	0	0	10	0	0	10	0
Hanaper fee -	1	13	8	1	13	8	1	13	18
	L 3						Bag-		

	Disbursements			Agent			Solicitor		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Bag-bearer - -	0	5	0	0	5	0	0	5	0
Entering <i>caveat</i> - -	0	5	0	0	5	0	0	5	0
Taking money out of court in usher's hand, per pound	0	0	2	0	0	2	0	0	2
A receipt for it -	0	2	6	0	2	6	0	2	6
Acknowledging a recogniz- ance, every name -	0	2	0	0	2	0	0	2	0
To the clerk - -	0	0	6	0	0	6	0	0	6
Stamp - - -	0	2	0	0	2	0	0	2	0
Paid for filing the answer	0	0	0	0	0	0	0	0	0
Paid for oath of due receipt of answer - -	0	1	0	0	1	0	0	1	0
Term-fee for every term busi- ness is done - -	0	0	0	0	6	8	0	10	0

Bill of Costs on a Motion.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Taking instructions to move -	0	6	8
Drawing notice of motion for executors to pay 400 <i>l.</i> out of the residue of the testator's estate, together with interest and costs, and fair copy thereof for counsel -	0	2	0
Two copies and service on plaintiff's and defend- ant's clerk in court -	0	4	0
Affidavit of service and duty -	0	5	7
Paid filing according to length -			
Drawing brief on motion -	0	6	8
Fair copy for counsel -	0	2	6
To counsel therewith if special, (if a motion of course 10 <i>s.</i> 6 <i>d.</i>) -	1	1	0
Attending him thereon -	0	6	8
Attending court on hearing motion -	0	6	8
Paid for order and entering according to length	0	6	8
Attending to pass order -	0	6	8
Coach-hire, &c. -	0	2	0

Costs on appointing a Guardian to consent to Marriage.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Taking instructions to proceed	-	0	6 8
Drawing petition to his Honor the Master of the Rolls	-	0	10 0
Fair copy to present	-	0	5 0
Stamp and paper	-	0	1 7
Paid answer and setting down for hearing at the Rolls	-	0	6 6
Attendance to present the same	-	0	6 8
Drawing affidavit to support petition, ingrossing the same	-	0	5 7
Paid stamp and paper	-	0	1 7
Paid swearing the same	-	0	1 6
Attending thereon	-	0	6 8
Paid filing and for office copy	-	0	4 10
Drawing two briefs for counsel and fair copy	-	0	10 0
Paid counsel therewith where guardian does not attend *	-	2	2 0
Attending him thereon	-	0	6 8
Paid court fees on hearing	-	0	6 0
Attending court thereon	-	0	6 8
Paid drawing up order by register	-	1	0 0
Paid entering	-	0	5 0
Attending passing and entering the same	-	0	6 8
Letters and messengers	-	0	2 0

N. B. There must be an affidavit, though no fortune to shew the repute of the guardian, and other circumstances in the petition of having no fortune, &c.

* If the guardian attend there need but one counsel, the guardian may consent for himself.

*Costs of Proceedings under 7th Ann. c. 19. to enable
Infant Trustees or Mortgagees to convey.*

EASTER TERM 1793.

On the behalf of }
Mr. F. G. }

l. s. d.

P ERUSING the will of Mr. <i>A. B.</i> deceased, and several surrenders of copyhold estates of the said Mr. <i>B.</i> devised by the said will in trust as to one moiety thereof, for Mr. <i>F. G.</i> and by virtue of which surrender the legal estate is now vested in <i>C. D.</i> an infant, son of <i>P. D.</i> and grandson and heir of <i>J. K.</i> who was trustee thereof, to the use of the will of the said Mr. <i>B.</i>	0	6	8
Drawing a petition to the Master of the Rolls for a reference of this matter to a Master, in order to have a conveyance from the infant, fo. 15.	0	7	6
Ingrossing same, and duty - - -	0	6	6
Paid answering it - - -	0	5	6
Paid drawing up order thereupon - -	1	1	0
Paid entering and expedition - - -	0	6	0
Drawing state of the facts, fo. 14. and fair copy for the Master - - -	0	7	0
Drawing Mr. <i>G.</i> 's affidavit of the infancy and heirship, and of the death of Mr. <i>B.</i> 's sisters to leave therewith, fo. 4. ingrossing it and duty	0	3	10
Paid serving it, and for an exhibit - -	0	4	0
Warrant on leaving state of facts and affidavit, copy and service - - -	0	3	0
Another warrant to proceed thereon, copy and service - - -	0	3	0
Attending that warrant, when the Master thought the proof of the infancy insufficient	0	6	8
Drawing a further affidavit of the infancy, fo. 4. ingrossing, duty, and swearing	0	5	8
Another warrant thereon to proceed on the state of facts, copy and service - - -	0	3	0
Attending that warrant, when it was thought proper to have an affidavit of the other moiety of the			

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	<i>l.</i>	<i>s.</i>	<i>d.</i>
the premises, having been surrendered to the use of Mrs. G. in trust, for whom it was devised	0	6	8
Drawing and ingrossing that affidavit, fo. 6. duty and oath	0	7	0
Drawing a further affidavit of the infancy and heirship, and of the death of the father and grandfather of the infant, which was also thought necessary	0	8	0
Warrant on leaving these affidavits, copy and service	0	3	0
Another to proceed thereon, copy and service	0	3	0
Attending that warrant	0	6	8
Warrant on preparing a draft of report, copy and service	0	3	0
Paid for copy, draft, report, fo. 20.	0	10	0
Warrant to sign the report, copy and service	0	3	0
Attending that warrant	0	6	8
Paid signing the report	1	5	0
Paid, transcribing it fair for that purpose	0	3	4
Paid the Master's clerk for extraordinary trouble and expedition	0	10	6
Paid filing the report	0	15	4
Paid porters, &c.	0	2	0

EASTER VACATION, 1793.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Drawing a long petition for the infant C. D. to convey, pursuant to the Master's report	0	10	0
Ingrossing it	0	5	0
Duty	0	1	6
Paid answering it	0	5	6
Fair copy of the petition, and order thereon for counsel, near 2 brief sheets	0	5	0
Fee to Mr. R. therewith	1	1	0
Attending and instructing him	0	6	8
Attending court Nov. 4th, petition heard, and order made for the infant to convey	0	13	4
Paid fees in court	0	6	0
Paid drawing up order	1	10	6
Perusing			

		<i>l.</i>	<i>s.</i>	<i>d.</i>
Perusing and attending passing it	-	0	6	8
Paid entering it	-	0	4	6

EASTER TERM, 1793.

On behalf of the infant, in }
the same matter. }

		<i>l.</i>	<i>s.</i>	<i>d.</i>
Paid for a copy of the state of facts, fo. 14.		0	7	0
The like of the several affidavits, fo. 17.		0	8	6
Attending three warrants thereon	-	1	0	0
Paid for copy report, fo. 20.	-	0	10	0
Attending warrant to sign it	-	0	6	8

EASTER VACATION, 1793.

		<i>l.</i>	<i>s.</i>	<i>d.</i>
Copy of the petition, and order for counsel to attend for the infant	-	0	5	0
Fee to Mr. L. therewith	-	1	1	0
Attending him	-	0	6	8
Attending court for the infant, Nov. 4th, on hearing petition	-	0	6	8

Costs

Costs on suing out a Commission of Lunacy to the Appointment of a Committee.

Ex parte B. a Lunatick.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending the witnesses, taking instructions for their affidavits	0	6	8
Attending taking minutes of the evidence to be taken on the commission	0	13	4
Drawing petition for a commission	0	3	4
Ingrossing, and duty	0	3	1
Drawing C. D.'s affidavit folio 8. ingrossing, duty and oath	0	8	10
Paid filing	0	7	4
Paid answering petition	0	15	0
Attending Lord Chancellor's secretary	0	6	8
Copy of petition and order for agent	0	2	0
Paid for writ <i>de lunatico inquirendo</i>	3	11	2
Fee	1	1	0
Carriage thereof	0	0	0
Notice to witnesses to attend the commission	0	6	8
Copies and service	0	0	0
Drawing precept to the sheriff	0	6	8
Attending commissioners to sign same 6s. 8d. each	1	0	0
Paid them on that occasion	3	3	0
Paid bailiff summoning jury	0	0	0
Paid the commissioners	0	0	0
Paid the jury	0	0	0
Paid sheriff for his attendance, &c.	0	0	0
Paid the house bill for jury, commissioners, and paid the witnesses for their trouble	0	0	0
Solicitor attending execution	2	2	0
Drawing the inquisition fo. 12	0	12	0
Copy thereof	0	4	0
Ingrossing thereof	0	6	0
Parchment	0	1	0
Paid commissioners signing same	3	3	0
Attending, each of them 6s. 8d.	1	0	0
Paid carriage thereof to London	0	0	0
Dirto back again to be re-executed	0	0	0
Letters and porters	0	0	0

HILARY TERM, 1772.

Costs on re-executing Writ.

			l.	s.	d.
Notice to the witnesses, &c.	-	-	0	0	0
Drawing precept to the sheriff <i>de novo</i>	-	-	0	0	0
<i>N. B. The other fees as before.</i>					
Attending return of inquisition	-	-	0	6	8
Paid carriage and portorage to <i>London</i>	-	-	0	0	0
Filing the writ and inquisition	-	-	0	19	0
Copy thereof for agent	-	-	0	6	8
Drawing petition to assign committees, ingrossing and duty	-	-	0	6	8
Paid answering	-	-	1	7	6
Attending Lord Chancellor's secretary	-	-	0	6	8
Letters, &c.					

EASTER TERM, 1772.

Paid swearing the committees' securities and wit- nesses to the execution of bond	-	-	0	0	0
Attending executing the bond	-	-	0	6	8
Paid for the grant, &c.	-	-	20	14	10
Solicitor's fee, and attending passing	-	-	3	3	0
Letters, porters, and paid carriage of grant			0	0	0

Costs on Procefs of Contempt.

MICHAELMAS TERM, 1771.

Term fee	-	-	0	10	0
Subpœna to appear	-	-	0	4	0
Postage of same	-	-	0	0	0
Service of subpœna	-	-	0	5	0
Affidavit thereof, duty and oath before a Master extraordinary	-	-	0	7	6
Letters	-	-	0	2	0

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HILARY TERM, 1772.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Term fee - - -	0	10	0
Attachment - - -	0	6	6
Warrant and return - - -	0	4	4
Attending sheriff for return <i>non est inventus</i>	0	6	8
Paid officer - - -	0	0	0
Attending with proclamations -	0	6	6
Postage thereof - - -	0	0	0
Paid for warrant thereon and attending for same	0	11	0
Postage of letters - - -	0	5	0

EASTER TERM, 1772.

Term fee - - -	0	10	0
Commission of rebellion - - -	0	19	10
Postage - - -	0	0	0
Paid two commissioners for their inquiry and return - - -	0	13	4
Attending for same - - -	0	6	8
Postage back - - -	0	0	0
Instructions for counsel to move for serjeant at arms - - -	0	2	6
To counsel to move - - -	0	10	6
Attending court with commission of rebellion returned - - -	0	6	8
Order and entering - - -	0	5	6
Paid serjeant at arms for his inquiry and return, as <i>per bill</i> - - -	0	0	0
Paid serjeant's warrant from Lord Chancellor	0	0	0

TRINITY TERM, 1772.

Instructions for counsel to move for a sequestration	0	2	6
To Mr. A. to move - - -	0	10	6
Attending court - - -	0	6	8
Order and writ - - -	0	0	0
Paid three commissioners entering and taking possession - - -	2	0	0
— Copies of the writ at 2s. 6d. each - - -	0	0	0
	Paid		

Paid two commissioners keeping possession — days	l.	s.	d.
at 13s. 4d. each <i>per diem</i> - -	0	0	0
<i>N. B. If the estate is small, the Master will reduce the commissioners' fees.</i>			
Two commissioners' journey to — in the county of — to take possession of defendant's estate there and back - -	1	6	8
Horse hire and expences - -	0	0	0
Service of — tenants there at 6s. 8d. each	0	0	0

Costs on Admission of a Town Solicitor.

Stamp and paper for affidavit of seeing two counsel and a clerk in court sign certificate of qualification - -	0	1	7
Paid swearing the same before a Master	0	1	6
Oath in court before the Master of the Rolls	0	1	0
Paid his Honor's under-secretary -	0	5	0
But if he prepares the above certificate and affidavit - -	0	10	6
To clerk of the Petty-bag office, for getting the admission signed by his Honor, and for inrolling - -	0	7	6
Paid for inrolling admission at law -	0	2	6
To clerk at warrant of attorney's office thereon	0	1	0

Costs on Admission of a Country Solicitor.

Stamp, paper and oath as above -	0	3	1
Paid the Master's clerk for admission -	0	5	0
The clerk's fee - -	0	7	6
Paid the clerk of the Petty-bag for inrolling admission - -	0	2	6

After February 5th, 1794, within the Bills of Mortality, and February 10th in any other part of *England* and *Wales*, the following additional stamp duties are to be paid. 34 G. 3. c. 14. s. 1.

For every contract to serve as a clerk in order to admission as a solicitor or attorney in any court at *Westminster*, 100*l.* And in order to admission into any court of Great Sessions in *Wales*, *Chester*, *Lancaster*, or *Durham*, or in any court

court in *England*, holding pleas, where the debt shall amount to 40*s.* 50*l.*

No such clerk shall be admitted unless the indenture be inrolled or registered with the proper officer appointed for that purpose, with an affidavit, within six months next after the execution thereof. *id.* *f.* 2.

Every such clerk, previous to his being permitted to practise, must make an affidavit of the payment of the duty. *id.* *f.* 3.

Clerks who have paid the duty shall not be subject to any duty for new contracts with other masters. *id.* *f.* 8.

No person to act as solicitor unless admitted and inrolled according to stat. 2 *Geo.* 2. *c.* 23. on penalty of 50*l.* with treble costs. 22 *Geo.* 2. *c.* 46. *f.* 12.

Solicitors incapable of being justices of peace, during their practice. 5 *Geo.* 2. *c.* 18. *f.* 2.

Sworn solicitors acting as agents for persons not qualified, to be struck off the roll, disabled from practice, and to stand committed for twelve months. 22 *Geo.* 2. *c.* 46. *f.* 11.

Clerks to solicitors to cause affidavits to be made, and filed, of the execution of their contracts. 22 *Geo.* 2. *c.* 46. *f.* 3. 5.

No person to be admitted a solicitor, before said affidavit read in court. *id.* *f.* 4.

Clerk to be employed in business during service. *id.* *f.* 8.

Notice of motion by unadmitted solicitor, irregular. 3 *P. Wms. Rep.* 104.

A sworn attorney may be admitted a solicitor. 2 *Geo.* 2. *c.* 23. *f.* 20.

Solicitors convicted of barrettry, subornation of perjury &c. practising, liable to transportation. 12 *Geo.* 1. *c.* 29.

Paid two commissioners keeping possession — days	l.	s.	d.
at 13 s. 4 d. each <i>per diem</i> - -	0	0	0
<i>N. B. If the estate is small, the Master will reduce the commissioners' fees.</i>			
Two commissioners' journey to — in the county			
of — to take possession of defendant's			
estate there and back - - -	1	6	8
Horse hire and expences - - -	0	0	0
Service of — tenants there at 6 s. 8 d. each	0	0	0

Costs on Admission of a Town Solicitor.

Stamp and paper for affidavit of seeing two counsel			
and a clerk in court sign certificate of quali-			
fication - - -	0	1	7
Paid swearing the same before a Master	0	1	6
Oath in court before the Master of the Rolls	0	1	0
Paid his Honor's under-secretary -	0	5	0
But if he prepares the above certificate and affi-			
davit - - -	0	10	6
To clerk of the Petty-bag office, for getting the			
admission signed by his Honor, and for in-			
rolling - - -	0	7	6
Paid for inrolling admission at law -	0	2	6
To clerk at warrant of attorney's office thereon	0	1	0

Costs on Admission of a Country Solicitor.

Stamp, paper and oath as above -	0	3	1
Paid the Master's clerk for admission -	0	5	0
The clerk's fee - - -	0	7	6
Paid the clerk of the Petty-bag for inrolling ad-			
mission - - -	0	2	6

After *February* 5th, 1794, within the Bills of Mortality, and *February* 10th in any other part of *England* and *Wales*, the following additional stamp duties are to be paid. 34 G. 3. c. 14. s. 1.

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court in *England*, holding pleas, where the debt shall amount to 40s. 50l.

No such clerk shall be admitted unless the indenture be inrolled or registered with the proper officer appointed for that purpose, with an affidavit, within six months next after the execution thereof. *id. f. 2.*

Every such clerk, previous to his being permitted to practise, must make an affidavit of the payment of the duty. *id. f. 3.*

Clerks who have paid the duty shall not be subject to any duty for new contracts with other masters. *id. f. 8.*

No person to act as solicitor unless admitted and inrolled according to stat. 2 *Geo. 2. c. 23.* on penalty of 50l. with treble costs. 22 *Geo. 2. c. 46. f. 12.*

Solicitors incapable of being justices of peace, during their practice. 5 *Geo. 2. c. 18. f. 2.*

Sworn solicitors acting as agents for persons not qualified, to be struck off the roll, disabled from practice, and to stand committed for twelve months. 22 *Geo. 2. c. 46. f. 11.*

Clerks to solicitors to cause affidavits to be made, and filed, of the execution of their contracts. 22 *Geo. 2. c. 46. f. 3. 5.*

No person to be admitted a solicitor, before said affidavit read in court. *id. f. 4.*

Clerk to be employed in business during service. *id. f. 8.*

Notice of motion by unadmitted solicitor, irregular. 3 *P. Wms. Rep. 104.*

A sworn attorney may be admitted a solicitor. 2 *Geo. 2. c. 23. f. 20.*

Solicitors convicted of barrettry, subornation of perjury &c. practising, liable to transportation. 12 *Geo. 1. c. 29.*

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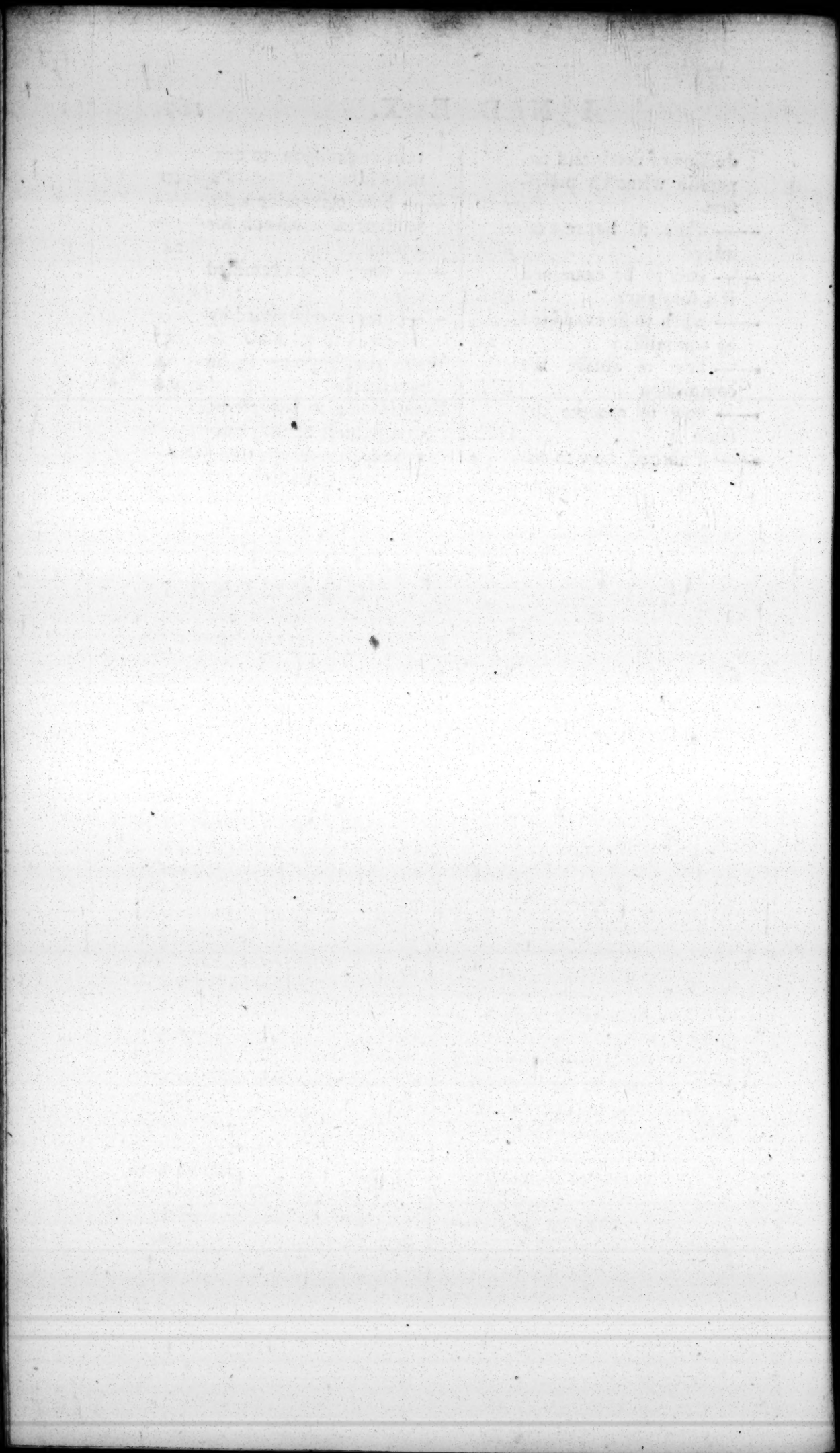
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Page 13.	line 30.	for <i>with</i> , read <i>within</i> .
16.	13.	for <i>defendunt</i> , read <i>defendant</i> .
39.	32.	for <i>fo</i> , read <i>for</i> .
47.	1.	for <i>serve</i> read <i>served</i> .



F. I N I S.

